



MINISTÈRE DE L'ÉCONOMIE  
ET DES FINANCES

RÉPUBLIQUE DU BÉNIN



DIRECTION  
GÉNÉRALE  
DES IMPÔTS

# General Tax Code

# 2024

OFFICIAL TRANSLATION

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### **Warning**

This publication is a translation of the General Tax Code of Bénin, resulting from the Law n°2021-15 of 23 December 2021 Laying Down the General Tax Code of the Republic of Benin. The text of this law has been updated to consider the provisions of law N° 2022-33 of 1 December, 2022 on the finance law for the 2023 financial year and those of law N° 2023-01 of 8 December, 2023 on the finance law for the 2024 financial year.

The translation is designed to provide accurate and authoritative information to the non French-speaking investors and taxpayers in regard to their rights and obligations. Tax Authorities point out that only the French version of the Code shall prevail.

## Translation of the main taxes

- **Beverage tax:** Contribution des licences
- **Business-use tax:** Contribution des patentes
- **Capital gains tax on real estate:** Taxe sur les plus-values immobilières
- **Composite business tax:** Taxe professionnelle synthétique (TPS)
- **Corporate income tax (CIT):** Impôt sur les sociétés (IS)
- **Employer's tax on salaries:** Versement patronal sur salaires
- **Excise duties:** Droits d'accises
- **Levy on the operations of non listed persons in the file of taxpayers:** Prélèvement personnes non connues au fichier des contribuables
- **Levy in discharge on sales of hydrocarbons:** Prélèvement libératoire sur les ventes d'hydrocarbures
- **Local development tax:** Taxe de développement local
- **Profit-based tax prepayment:** Acompte sur impôt assis sur les bénéfices
- **Registration duties:** Droits d'enregistrement
- **Single property tax:** Taxe foncière unique
- **Special flat-rate levy on second-hand vehicles:** Prélèvement forfaitaire spécial sur les véhicules d'occasion
- **Sport development tax:** Taxe pour le développement du sport
- **Stamp duty:** Droits de timbre
- **Tax on advertising:** Taxe sur la publicité
- **Tax on business profits:** Impôt sur les bénéfices d'affaires (IBA)
- **Tax on consumption of electricity and water:** Taxe sur la consommation d'électricité et d'eau
- **Tax on financial and insurance activities:** Taxe sur les activités financières et assurances (TAFA)
- **Tax on firearms:** Taxe sur les armes à feu
- **Tax on gambling activities:** Taxe sur les jeux de hasard
- **Tax on income from investments:** Impôt sur le revenu des capitaux mobiliers (IRCM)
- **Tax on income from real estate:** Impôt sur les revenus fonciers
- **Tax on live entertainment, games and leisure:** Taxe sur les spectacles, jeux et divertissements
- **Tax on motor vehicles:** Taxe sur les véhicules à moteur
- **Tax on passenger vehicles:** Taxe sur les véhicules de tourisme
- **Tax on petroleum products:** Taxe sur les produits pétroliers
- **Tax on specific products:** Taxe sur les produits spécifiques
- **Tax on the sale of artisanal fermented beverages:** Taxe sur la vente des boissons fermentées de préparation artisanale
- **Tax on the sale of electronic communications services:** Contribution sur la vente de services de communications électroniques
- **Tax on wages and salaries:** Impôt sur les traitements et salaires (ITS)
- **Tourist tax:** Taxe de séjour
- **Value Added Tax (VAT):** Taxe sur la valeur ajoutée (TVA)

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**LAW N°2021-15 OF 23 DECEMBER 2021**

Laying Down the General Tax Code of the Republic of Benin

The National Assembly has deliberated and adopted in its session of December 8, 2021;

The President of the Republic promulgates the following law:

**Art.1.-** 1) The base, assessment, control and collection methods for taxes of all types are determined by statute.

2) The rules on the base, assessment and collection of the taxes, duties and charges referred to by this Code are applicable, subject to the provisions of the international conventions that have been duly ratified by Benin.

3) All tax benefits and all exemptions from taxes, duties and charges that are not provided for by statute, are null and void.





**Book 1 - Direct taxes****Part 1 - Income taxes****Chapter 1 - Corporate income tax (CIT)**

**Art.2.-** The profits generated by the companies, partnerships and other legal persons referred to in this Chapter are subject to an annual tax known as corporate income tax.

**Section 1 - Scope of application****Sub-section 1 - Taxable persons**

**Art.3.-** The following are liable to corporate income tax:

1) On account of their form:

- a) corporations, simplified joint-stock companies, limited liability companies and limited partnerships;
- b) cooperative companies, groupings and their unions and federations, as well as confederations of cooperative companies and groupings, regardless of their activities;
- c) all companies, the shareholder of which is a natural or legal person.

2) On account of their activities:

- a) state-owned enterprises, as well as centralised or decentralised government agencies that are financially autonomous and that engage in an industrial or commercial activity;
- b) legal persons who act as an intermediary for the purchase or sale of real property or going concerns or who, habitually, purchase in their name the same properties with a view to the resale thereof, and building societies;
- c) legal persons who subdivide and sell the tracts of land they own;
- d) legal persons who lease out a commercial or industrial establishment that has the fittings and equipment needed for the operation thereof, regardless of whether or not the lease includes all or part of the intangible assets of the commercial or industrial concern;
- e) holders of permanent licences and concessions for, and lessees of, market stall locations or rights;
- f) insurance and reinsurance companies, regardless of the form thereof;
- g) banks and financial institutions;
- h) all other legal persons who engage in operations or transactions of a for-profit nature;
- i) legal persons who engage in oil, mining and forestry operations.

3) As a result of a tax election, legal persons who are not expressly made subject to the tax by paragraphs 1 and 2 of this Article, in particular:

- a) general partnerships and economic interest groupings (EIG);
- b) joint ventures;
- c) non-trading partnerships.

The election, which must be made before 30 November, applies as from 1 January of the following fiscal year. It is irrevocable and cannot be made by partnerships that result from the prior conversion of joint-stock companies.

### Sub-section 2 - Exemptions

**Art.4.-** The following are exempted from corporate income tax:

- 1) Consumer cooperative companies that merely combine the orders of their members and that merely distribute the foodstuffs, products or goods thus ordered in their warehouses.
- 2) Low-cost housing agencies.
- 3) Mutual or cooperative savings and credit institutions governed by Law n°2012-14 of 21 March 2012 that regulates decentralised financial systems in the Republic of Benin, for their savings inflow and credit distribution operations.
- 4) Provident institutions, agricultural cooperative companies, agricultural general interest associations, agricultural mutual insurance and reinsurance companies.
- 5) Fraternal benefit societies.
- 6) State-owned public institutions or decentralised government agencies that are not industrial or commercial in nature.
- 7) Local authorities and commonwealths of municipalities, as well as their public service boards.
- 8) Chambers of commerce, industry, crafts, agriculture and trades, where they do not engage in commercial activities.
- 9) Legally established non-profit associations and organisations, the management of which is subject to a non-distribution constraint.

“Non-profit” means the pursuance of an activity that does not adopt management procedures that are similar to those of commercial companies. Moreover, these activities must not be in competition with the commercial or non-commercial sector, unless their management is subject to a non-distribution constraint.

The management is only subject to a non-distribution constraint if the following conditions are met:

- a) the organisation must be managed and run with no inurement by persons who do not, in their own right or via an intermediary, have a direct or indirect stake in the operating results. However, where the association decides that the performance of the functions assigned to its officers justifies the payment of remuneration, the inurement prohibition will not be violated if the association’s organisational documents and operating methods ensure its financial transparency, the proper and periodic election of

its officers, the effective oversight of its management by its members, and the appropriateness of the remuneration in light of the obligations that are actually incumbent upon the officers concerned;

- b) the monthly remuneration of an officer cannot under any circumstances exceed ten (10) times the statutory minimum wage.

Notwithstanding this exemption, associations and organisations are required to file, at the latest on 30 April of each year, with the relevant tax office for their geographical location, a policy and financial report on their entity in respect of the previous calendar year.

Decentralised financial systems that pursue their activity in the form of an association are only exempt for savings inflow and credit distribution operations.

10) Open-ended investment companies, for the part of the profits generated by net income from their portfolio or the capital gains they make on the sale of securities or shares that were part of said portfolio.

11) Venture capital or equity investment financial institutions and venture capital or equity investment firms, for the part of the profits generated by net income from their portfolio. This exemption is valid for fifteen (15) years as from the date on which the company was established and is contingent on the following conditions being met:

- a) at all times, a minimum of 50% of the net value of the total portfolio being made up of shares in non-listed companies;
- b) attaching a statement to the income tax return that makes it possible to assess, at the end of year, whether the 50% quota referred to above is met.

12) Companies or partnerships, the purpose of which is the construction of properties with a view to the subdivision thereof, with regard to the capital gains that result from the exclusive allocation to the shareholders or partners, by means of an outright partition in kind, of the fraction of the eligible properties constructed by said companies or partnerships.

The benefit of these exemptions is however contingent on the minutes of the general meeting that approved the partition being registered before a time-limit of seven (7) years expires as from the date of incorporation of the company or partnership.

The instrument of partition itself must be registered at the latest within one (1) year of the registration of the minutes of the decision of the general meeting that approved the proposed partition.

13) Farming, fishing and livestock companies.

14) The Benin Caisse des Dépôts et Consignations, as well as all future subsidiaries thereof that perform a public interest role.

### Sub-section 3 - Territoriality

**Art.5.-** 1) Corporate income tax is payable in respect of the profits generated in enterprises that are operated in the Republic of Benin, as well as in respect of profits, taxation of which is attributed to Benin by an international double taxation convention.

2) The following are deemed to be operated in the Republic of Benin:

- a) companies and other entities that are resident in the Republic of Benin, i.e., those whose registered office or place of effective management is located in the Republic of Benin;
- b) non-resident companies and other entities that have a permanent establishment in the Republic of Benin.

3) In the scenario referred to in section 2) b), the profits of non-resident companies are taxable in the Republic of Benin, where their permanent establishments are located, but solely to the extent that said profits are attributable:

- a) to said permanent establishments; or
- b) to the sales, in the Republic of Benin, of goods of the same type or of a type similar to those that are sold by said permanent establishments; or
- c) to other industrial or commercial activities that are pursued in the Republic of Benin and that are of the same type or of a type similar to those that are pursued by said permanent establishments.

**Art.6.- (L.F.2024)** 1) The term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2) The following in particular constitute permanent establishments:

- a) a centre of management or of operations;
- b) a branch;
- c) a warehouse, including where it is made available to a person for the purpose of storing the goods of others;
- d) an office;
- e) a factory;
- f) a workshop;
- g) a mine, an oil or gas well, a quarry or other place of natural resource extraction;
- h) a facility or structure used to explore for or exploit natural resources.

3) The following are deemed to have the nature of a permanent establishment:

- a) a construction site, an assembly or installation project or monitoring activities that are performed thereon, where said site, said project or said activities have a duration of more than three (3) months;
- b) the supply of services, including consulting services, by an enterprise that is acting through employees or other personnel hired by the enterprise for that purpose, but only if the activities of this type are continued for the same project or a related project on Beninese territory for one or more periods that represent a total of more than one hundred and eighty-three (183) days, over any given period of twelve (12) months.

4) There is no permanent establishment if:

- a) facilities are used for the sole purposes of storing or displaying goods that belong to the enterprise;
- b) goods belonging to the enterprise are stored for the sole purposes of storage or display;
- c) goods belonging to the enterprise are stored for the sole purposes of processing by another enterprise;
- d) a fixed place of business is used for the sole purposes of purchasing goods or collecting information for the enterprise;
- e) a fixed place of business is used for the sole purposes of pursuing any other activity for the enterprise;

- f) a fixed place of business is used for the sole purposes of the combined pursuance of the activities mentioned in sections a) to e) of this paragraph,
- provided that said activity, or, in the case of section f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

5) Paragraph 4 of this Article does not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place of business or in another place of business located in the Republic of Benin, and:

- a) that place of business or other place constitutes a permanent establishment for the enterprise or for the closely related enterprise under the provisions of this Article, or
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place of business, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

6) Notwithstanding the provisions of paragraphs 1 and 2 of this Article, but subject to the provisions of paragraph 8 of the same article, where a person pursues an activity in the Republic of Benin on behalf of an enterprise, said enterprise is deemed to have a permanent establishment in the Republic of Benin for all the activities that said person pursues for the enterprise, if said person:

a) Habitually enters into or habitually plays the principal role that leads to the entry into of contracts which, routinely, are entered into without material modification by the enterprise, and if said contracts are:

- i. in the name of the enterprise, or
- ii. for the transfer of ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
- iii. for the provision of services by that enterprise,

unless said person's activities are limited to those that are mentioned in paragraph 4, which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 5 applies), would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

b) Does not habitually enter into contracts or play a principal role that leads to the entry into of contracts, but habitually keeps stocks of goods in the Republic of Benin, from which said person regularly delivers goods on behalf of the enterprise.

7) Notwithstanding the provisions of paragraphs 1 to 6 of this Article, a non-resident insurance company, except in the field of reinsurance, is regarded as having a permanent establishment in the Republic of Benin if it collects premiums or insures risks that are incurred in said country, via an employee or a representative who does not fall into the category of persons referred to in paragraph 6 of this Article.

8) Paragraphs 6 and 7 of this Article do not apply when the person who carries on an activity in the Republic of Benin on behalf of a non-resident enterprise carries on a business activity in the Republic of Benin in the capacity of an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely

related, said person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

9) The fact that a resident company controls or is controlled by a non-resident company is not enough, in and of itself, to make any one of said companies a permanent establishment of the other.

10) For the purposes of this Article, a person or an enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises.

In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50% of the beneficial interest in the other (or, in the case of a company, more than 50% of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50% of the beneficial interest (or, in the case of a company, more than 50% of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

**Art.7.-** 1) If a legal person, the registered office of which is located outside of national territory, has at its disposal one or more properties located in the Republic of Benin or grants use thereof free of charge or in consideration for rent that is less than the actual rental value, it will be liable to corporate income tax on a base that cannot be less than the actual rental value of said property or of said properties.

2) Where the occupant has their tax residence in the Republic of Benin, said occupant will be jointly and severally liable for the payment of said tax.

3) These provisions are not applicable, however, to non-profit organisations, which, subject to a non-distribution constraint, pursue an activity of a social or philanthropic, educational or cultural nature and that demonstrate that the pursuit of said activity in the Republic of Benin justifies the possession or use of the properties in question.

## Section 2 - Computation of the taxable profit

### Sub-section 1 - General principles

**Art.8.-** 1) Tax is assessed each year on the basis of the profits generated during the previous year.

2) Taxpayers are required to close off their accounts each year on 31 December, except in the event of the disposal or discontinuation of activities during the year.

Nevertheless, educational institutions may close off their accounts on 31 August of each year. The conditions of application of this paragraph will be specified by a regulation.

3) Enterprises established prior to 1 July of a given year are required to close off their first accounting period on 31 December of that same year.

4) Enterprises established after 30 June of a given year may close off their first accounting period on 31 December of the following year, subject to making a request to the revenue agent by 31 January following the establishment date at the latest.

The authority's answer must be provided within fifteen (15) days of the request; the lack of a response constitutes acceptance.

In this case, the tax will be assessed on the basis of the profits generated during the period considered. However, the enterprise must pay the minimum tax for the period between the establishment date and 31 December of the same year. Said minimum tax will then be deducted from the tax owed in respect of the results of the balance sheet in which it is included.

**Art.9.-** 1) The taxable profit is the net profit, which is computed on the basis of the overall result of all the transactions of all types effected by taxpayers, including, in particular, any and all asset disposals, either during or at the close of operations.

2) The net profit is made up of the difference between the values of the net assets at the close and the start of the period, the results of which are to be used as the basis for the tax, minus additional contributions and increased by the amounts withdrawn during said same period by the proprietor or by the shareholders or partners.

The net assets are defined as the excess of the asset values over the total liabilities comprising debt obligations to third parties, amortization, depreciation and impairment, and justified provisions.

## **Sub-section 2 - Taxable income**

### ***Paragraph 1 - Computation of the taxable income***

**Art.10.-** The taxable income includes, in particular:

- 1° sales of goods and services;
- 2° financial income;
- 3° income other than from ordinary activities, in particular proceeds from disposals of non-current assets;
- 4° ancillary revenues or income;
- 5° income from securities;
- 6° income from returnable packaging;
- 7° income from the leasing of developed and undeveloped real property, including all ancillary revenues;
- 8° commercial subsidies;
- 9° work in progress;
- 10° reversals and transfers of expenses;
- 11° relief obtained from the tax administration in respect of deductible taxes;
- 12° positive currency translations;
- 13° upward value adjustments, or
- 14° all other income in respect of the activities pursued by companies or partnerships.

**Art.11.-** For entities that sell goods or raw materials that are listed on a stock market to related enterprises within the meaning of Article 45(2) of this Code, the amount of the taxable income cannot be less than that computed on the basis of the market prices on

the date of the contract for the sale of the goods or raw materials, or on the date of the delivery thereof, if said price is higher.

**Art.12.-** 1) Income that corresponds to accounts receivable or to payments on account of prices is attributed to the fiscal year during which the goods are delivered, for sales or similar transactions, and according to the progress of the work, for supplies of services.

2) However, said income must be taken into account:

- a) for continuous services that are remunerated, in particular, by interest or lease payments, and for non-continuous services, but with successive deadlines over several fiscal years, as and when they are performed;
- b) for work on a company's own facilities that leads to complete or partial handover, according to the progress of the work.

3) The term "delivered", within the meaning of the section 1 above, is defined as the physical handover of the good, even if the contract includes a retention of title clause.

In all cases, income cannot be recognised after a complete or partial invoice has been issued.

**Art.13.-** 1) Inventories are valued in accordance with the provisions of Article 44 of the OHADA Uniform Act on accounting law and financial reporting.

Raw materials and goods paid in advance but not received are included in the inventories.

2) Work in progress is assessed unit by unit, or category by category, at the cost price, excluding purely commercial and administrative expenses.

3) Currency translation adjustments, as well as receivables and debts expressed in foreign currencies compared to the amounts initially recognised, are determined at the close of each fiscal year, according to the exchange rate at closing, and taken into account for the computation of the taxable income for the fiscal year.

### ***Paragraph 2 - Exempt income***

**Art.14.-** The following are exempted from corporate income tax:

- 1° premiums generated by transactions effected with shareholders or partners and that are distributed to them in proportion to their individual orders, for consumer co-operative companies;
- 2° the portion of the net profits that is distributed to the workers, under the conditions provided for by the laws that govern production workers' cooperative companies.

**Art.15.-** 1) The net income from the securities and investments that are included in the enterprise's assets and that is liable to tax on income from securities or exempted from said tax by the laws in force, is exempt, under the following conditions and with the following provisos.

2) A portion of the expenses and charges, set at a flat rate of 30% of said amount, must be deducted from the amount of said income, for revenues other than income from securities issued by the Republic of Benin, the Beninese public authorities and their branches.



3) The provisions of paragraph 1 above also apply to the net income from equity interests received by the holding or parent company.

4) The following are excluded from the aforementioned exemption: income from loans that are not represented by marketable securities, as well as income from deposit and current accounts, where said income is received by and on behalf of bankers or securities management firms, as well as by and on behalf of companies that are authorised to engage in property loan transactions by the government.

### ***Paragraph 3 - Treatment of grants***

**Art.16.-** 1) Capital grants awarded to enterprises must not be included in the results of the year in which they are received. These grants must be included in the net income of fiscal years commensurately with the depreciation recognised, at the close of said fiscal years, in respect of the cost price of the depreciable capital assets, where they are used for the creation or acquisition of said capital assets.

Grants that are allocated to the acquisition or creation of non-depreciable capital assets must be included, in equal fractions, in the income of the years during which the capital asset concerned remains inalienable under the contract that awarded the grant or, if there is no inalienability clause, in the profit for each of the subsequent ten years, including the year during which said capital assets were created or acquired.

In the event of the disposal of the capital assets referred to in this article, the fraction of the grant that has not yet been applied to the tax bases must be deducted from the carrying value of said capital assets when calculating the taxable capital gain or the deductible capital loss.

2) Operating or balancing grants must be included in the net income of the year during which they were received.

### ***Paragraph 4 - Treatment of capital gains***

**Art.17.-** 1) By way of derogation from the provisions of Article 9 and Article 10(3) of this Code, capital gains that are generated by the disposal, as part of operations, of non-current assets, are not included in the taxable profit of the fiscal year during which they were generated if, in the declaration of the results for said fiscal year, the taxpayer makes a commitment to reinvest a sum equal to the amount of said capital gains, plus the cost price of the divested assets, in non-current assets in its enterprises in the Republic of Benin before the expiration of a time-limit of three (3) years following the close of the fiscal year.

This commitment to reinvest must be appended to the declaration of the results for the fiscal year during which the capital gains were generated and for the fiscal years covered by the reinvestment period.

2) For the application of paragraph 1 of this Article:

- a) only the non-current assets that were first recognised on the enterprise's balance sheet five (5) years before the disposal date can benefit from this treatment;
- b) the reinvestment cannot take the form of the acquisition of non-depreciable assets or the acquisition of movable property or real property that constitute luxuries.

3) If the reinvestment is made within the time-limit stipulated in paragraph 1, the non-taxed capital gains will be deemed to have been allocated to the depreciation of the new non-current assets and will be deducted from the cost price for the calculation of the depreciation and capital gains generated subsequently. If this is not the case, they will be added back to the taxable income for the fiscal year during which the aforementioned time-limit expired.

If the taxpayer discontinues their professional activity or disposes of their enterprise during the aforementioned timeframe, the capital gains to be reinvested will be taxed immediately.

**Art.18.-** 1) Capital gains, other than those generated on goods, that result from the allocation of shares or equity interests following mergers, demergers or spin-offs, are exempted from corporate income tax provided that the transactions benefit legal persons who are liable to corporate income tax and who have their registered office in the Republic of Benin.

2) The application of the exemption is contingent on the obligation provided for in the merger, demerger or contribution agreement, for the absorbing or new company or for the company to which the contribution is made, to calculate, as regards the items other than the goods included in the contribution, the annual amortization and depreciation to be deducted from the profits, as well as the subsequent capital gains that result from the disposal of these items, according to the cost price they would have for the merged companies or for the contributing company, less the amortization and depreciation they have already recognised.

**Art.19.-** (L.F.2024) 1) Capital gains that are recognised when a balance sheet is revalued are taxable immediately.

The revaluation must also comply with the accounting principles laid down by Articles 62 to 65 of the OHADA Uniform Act on accounting law and financial reporting.

2) a) Where justified by economic conditions, an order of the Finance Minister may authorise the temporary application of favourable tax treatment to revaluations.

b) The following may benefit from favourable tax treatment: natural or legal persons who carry on an industrial, commercial, artisanal, agricultural, non-trading or independent professional activity, excluding joint ventures, non-profit associations, foundations and de facto partnerships, provided that they do not fall within the scope of application of the composite business tax.

c) Assets must be revalued, according to the usefulness that their ownership presents for the enterprise, at their estimated cost of acquisition or refurbishment.

d) For non-depreciable assets, revaluation surpluses must be entered, on a pre-tax basis, in a "Revaluation Reserve" account under the balance sheet liabilities. Said reserve cannot be distributed and must not be used to offset losses. If revalued assets are divested, the capital gain or the capital loss, from a tax standpoint, is calculated based on the original value of the asset.

e) For depreciable assets, the new values assigned to non-current assets, the revaluation of which was calculated, must not exceed:

- the valuation provided by the public land authority or by a certified construction expert;
- the amounts that result from the application of official indexes that reflect increases in the prices of equipment and tooling.

The revaluation surpluses must be entered in a "Specific Revaluation Provisions" account, under the balance sheet liabilities. This specific provision must be offset against income, in fifths, as from the fiscal year in which the revaluation was first recognised.

The depreciation annuities must be increased according to the new values, with no modification of the depreciation period.

In the event of the disposal of a revalued asset, the residual fraction of the provision must be added back to the income for the fiscal year during which the disposal took place. The capital gain or loss is determined based on the revalued amount.

f) The benefit of the favourable treatment does not cover transport equipment, office or household equipment and furniture, or equipment and tooling, the useful life of which does not exceed five (5) years, as well as non-current assets that have been depreciated in full.

3) Notwithstanding the above provisions, capital gains arising from the revaluation of the balance sheet of public companies operating in sectors deemed to be a priority by the government may benefit from an exemption, the terms of which are defined by order of the Minister of Finance.

### Sub-section 3 - Deductible expenses

**Art.20.-** 1) The profit is calculated following the deduction of all expenses that meet the following conditions:

- a) are included in the expenses for the fiscal year during which they were incurred;
- b) are incurred in the direct interest of operations or are associated with the normal management of the enterprise;
- c) correspond to an actual expense;
- d) are supported by sufficient documentation, in particular standard invoices, without prejudice to the express exemptions granted for certain activities by the Director General of Taxes;
- e) contribute to the generation of non-exempt income;
- f) result in a reduction of the enterprise's net assets;
- g) for amounts that give rise to withholding tax, provision of proof of payment of the corresponding amount withheld.

2) Expenses must be recognised in accordance with the principles laid down by the accounting system of the Organization for the Harmonization of Business Law in Africa, provided that said principles are not incompatible with the applicable rules for the tax base.

3) In addition to the general deductibility conditions mentioned above, the expenses described in the following articles are subject to specific deductibility conditions.

**Art.21.-** Expenses of any kind, of amounts greater than or equal to one hundred thousand (100,000) CFA francs, cannot be paid in cash, failing which the penalties provided for in Article 503 of this Code will apply.

### **Paragraph 1 - Personnel costs**

**Art.22.-** 1) The remuneration awarded to an employee is only deductible insofar as it corresponds to actual work and is not excessive in light of the significance of the service rendered. This provision applies to all direct or indirect remuneration, including indemnities, allowances, benefits in kind and expense reimbursements.

2) The remuneration allocated to the personnel constitutes a deductible expense in respect of the fiscal year during which the corresponding expenditure was incurred.

Expenses of this type that have not yet been paid at the close of a fiscal year cannot be deducted from the results for said fiscal year unless the enterprise has made firm commitments to the employees regarding the principle and the calculation method of the amounts owed. These expenses must be recognised in the form of accruals when their exact amounts are known or, if not, in the form of a provision that corresponds to the probable amounts thereof.

**Art.23.-** 1) The paid vacation indemnity that is calculated in accordance with labour legislation, including the social security and tax charges associated therewith, is deductible.

2) The following are also deductible if they meet the general conditions for the deductibility of expenses:

- a) personnel training costs;
- b) sick pay;
- c) the health insurance premium paid by the enterprise to an insurance company pursuant to a contract entered into for all the personnel or for a given employee.

**Art.24.-** Compensation of all kinds paid to managing directors or directors is deductible, provided that:

- 1° said compensation corresponds to actual work;
- 2° said compensation is not excessive in light of the significance of the duties performed;
- 3° said compensation is made subject to the tax on wages and salaries in the name of the beneficiaries.

### **Paragraph 2 - Financial expenses**

**Art.25.-** 1) For the purpose of this Article, the term "interest" means:

- a) income from receivables of all types, regardless of whether they are secured with mortgage guarantees or a revenue sharing clause with the debtor, and, in particular, income from securities and income from bonds or debentures, including the premiums attached to said bonds or debentures;
- b) payments that are economically equivalent to interest, in particular, payments made in consideration for the granting of a security interest to guarantee the repayment of a debt, or the interest expenses on amounts that are owed under finance leases.

Penalties for late payment are not regarded as interest.

2) The interest paid on loans and advances received is deductible in accordance with the general deductibility conditions for expenses, and provided that the rates applied correspond to those of the market.

However, the interest paid by a company or partnership to its shareholders or partners or to companies or partnerships in the same group, within the meaning of Article 45(2) of this Code, including financial institutions, is only deductible within the limit of interest calculated at the reference rate of the BCEAO, increased by three (3) points, and provided that the share capital has been paid up in full.

3) The total amount of the net deductible interest owed annually in respect of all the debts incurred by an enterprise is limited to 30% of the earnings before interest, depreciation, amortization and provisions.

The fraction of the interest that is not deductible immediately may be carried over and deducted in respect of subsequent fiscal years, in accordance with the conditions defined in this article, within the limit of five (5) years.

The provisions of this paragraph do not apply to interest that is paid or owed by financial institutions or by licensed insurance companies, which must be recognised as an operating expense.

4) Accrued interest on loans is deductible if the commitments to which they pertain have been honoured, within the meaning of Instruction n°026-11-2016 of 15 November 2016 of the BCEAO.

5) Shareholders' or partners' current accounts must be reimbursed within five (5) years of the funds being made available, and the company or partnership must not have undergone liquidation during that period. If this is not the case, the interest deducted in respect of these amounts must be added back to the income for the sixth year or the year of liquidation.

### ***Paragraph 3 - Services, commissions and royalties***

**Art.26.-** 1) Commissions or brokerage fees for goods purchased on behalf of enterprises operated in the Republic of Benin are eligible for deduction from the taxable profit within the limit of 5% of the amount of the purchases excluding taxes made by purchasing platforms or intermediaries.

A proper invoice for said commissions must be issued and attached to that of the suppliers.

2) Commissions or brokerage fees that are owed to the persons listed below are eligible for deduction from the taxable profit, if the insurance company provides proof that the beneficiaries are in possession of a valid professional licence on the date of the transaction:

- natural persons who are not employees and who have a licence;
- natural persons who have a general insurance agent's licence;
- natural persons who are entrusted, on a provisional basis, for a maximum, non-renewable period of two (2) years, with the duties of general insurance agent;
- banks, financial institutions, accredited micro-finance institutions, savings banks and the post office.

**Art.27.-** 1) Royalties are deductible on the condition that the debtor provides proof that the rights to which said royalties are attached are still currently valid.

2) However, if the company that receives the royalties is not operated in the Republic of Benin, the total of the amounts referred to in paragraph 1 of this Article is only deductible to the extent of 5% of the turnover excluding taxes.

3) Within the meaning of this Article, the term "royalties" means the remunerations of all types that are paid for the use or licensing of the use of a copyright to a literary, artistic or scientific work, including motion pictures, or the films or soundtracks that are used for radio or television broadcasts, a patent, a trademark or trade name, a drawing or a model, a blueprint, a secret formula or process, as well as for the use or licensing of the use of industrial, commercial or scientific equipment and for information that is related to experience accrued in an industrial, commercial or scientific field.

**Art.28.-** 1) Within the limits provided for by this article and if the debtor provides proof that they correspond to actual operations, that they are not abnormal in nature and that they are not excessive, the amounts paid as remuneration for headquarters expenses and technical assistance expenses are deductible.

2) The portion of the headquarters overheads that subsidiaries and/or permanent establishments located in the Republic of Benin are required to pay cannot exceed 10% of the taxable income prior to deduction of the expenses in question. In the event of a loss, this provision applies to the profit, prior to deduction of the headquarters expenses, of the most recent fiscal year that is not time-barred. If the fiscal years that reported a profit are all time-barred, the right to deduction will be definitively lost.

The headquarters expenses correspond to secretarial costs, the remuneration of the personnel employed at the headquarters and other expenses incurred by the parent company for the needs of all the subsidiaries and/or permanent establishments.

3) Technical assistance, accounting and financial expenses, the costs of studies and other similar costs, are only deductible within a limit of 10% of the overheads if they are paid to a company that is not operated in the Republic of Benin.

Overheads should be understood to mean the operating expenses, minus purchases of inventories and raw materials, amortization, depreciation and provisions.

**Art.29.-** The following are not deductible:

- 1° the amounts, other than reimbursements of expenses actually incurred, paid by a permanent establishment to its headquarters or to any other of its establishments in consideration for a lease of equipment or property, the use of intellectual property rights, or as a commission, for specific services provided or for management services;
- 2° interest paid by a permanent establishment other than a bank to its headquarters, in consideration for amounts that the headquarters drew from its own funds and made available to said permanent establishment in any form whatsoever.

**Art.30.-** 1) The interest, arrears and other income from bonds, receivables, deposits and guarantees, royalties from the assignment or licensing of operating licences, patents for inventions, trademarks, manufacturing processes or formulae and other similar rights or remuneration for services, which is paid or owed by a natural or legal person who is domiciled or established in the Republic of Benin to natural or legal persons who are domiciled or established in a foreign State or in a territory located outside of Benin and who, in that location, benefit from favourable tax treatment, are not accepted as deductible

expenses for the computation of tax, unless the debtor provides proof that the expenses correspond to actual operations, and that they are not abnormal or excessive in nature.

2) For the application of this Article, persons are deemed to benefit from favourable tax treatment in the State or territory concerned, if, in that location, they are not taxable or, in that location, they are liable to income tax, the amount of which is less than one-half of the income tax to which they would have been liable under ordinary-law conditions in the Republic of Benin, if they had been domiciled or established in said Republic.

#### **Paragraph 4 - Insurance premiums**

**Art.31.-** 1) The following are deductible:

- a) insurance premiums on policies that are taken out for the enterprise, in order to cover risks, the materialisation of which directly causes, in and of itself, a reduction in the net assets;
- b) insurance premiums which, in and of themselves, constitute an operating expense;
- c) health insurance premiums paid to insurance companies for the benefit of all the personnel, where the reimbursement of expenses of this type to the same persons are not included in the deductible expenses.

2) Amounts that are set aside by the enterprise with a view to providing its own insurance are not deductible.

3) Insurance premiums for post-employment benefits are deductible, provided that:

- a) the payment of the premium constitutes an obligation that is provided for by the labour legislation in force in the Republic of Benin;
- b) the insurance contract is general in nature, i.e., concerns all the personnel or one or more specific categories of that personnel;
- c) the premium is paid to an insurance company that has a place of business in the Republic of Benin;
- d) the enterprise that paid the insurance premium for the post-employment benefits retains neither the ownership of nor discretionary access to the funds.

#### **Paragraph 5 - Aid, donations, gifts and grants**

**Art.32.-** (L.F.2023) 1) Gifts, membership dues, grants and other donations are deductible within the limit of one per mil (1‰) of the turnover excluding taxes. This limit does not concern professional dues that entities pay to organisations that represent or defend the interests of the industry, within the limit of one set of dues.

2) Gifts and donations in the fields of education, health, cultural industry, tourism and arts or collective infrastructures that are granted to the State, to its branches and to the sports federations recognised by the government, are deductible within the limit of twenty-five million (25,000,000) CFA francs, in addition to the deduction granted in the preceding paragraph. Proof of receipt of the gifts and donations by the beneficiary must obligatorily be attached to the tax return.

3) Gifts and items that are specifically designed for advertising, with supporting invoices, are eligible for deduction within the limit of three per thousand (3‰) of the amount of the turnover excluding taxes.

**Paragraph 6 - Expenditure on luxuries**

**Art.33.-** Expenses of all types concerning the practice of hunting or sport fishing, the use of pleasure boats, private aircraft or leisure homes, and, more generally, all expenditure on luxuries, are not deductible, unless said activities constitute the company's main line of business.

Amounts that are not deductible pursuant to this article are regarded as constructive dividends.

**Paragraph 7 - Undeclared remuneration**

**Art.34.-** Remuneration paid by an enterprise that does not disclose the identity and the address of the beneficiary is not deductible.

**Paragraph 8 - Taxes, duties and penalties**

**Art.35.-** The taxes assessed to the enterprise and collected during the fiscal year are deductible, with the exception of income tax and the tax on motor vehicles.

If relief from deductible taxes is granted at a later date, the amount thereof must be included in the income for the fiscal year during which the company was informed of said relief.

**Art.36.-** The amount of the settlements, tax penalties, seizures, surcharges and penalty taxes of all types that are assessed to persons who are in breach of tax, customs and social security legislation, of the regulations that govern prices, controls on foreign exchange and, in general, domestic laws and regulations, is not deductible.

**Paragraph 9 - Deferral of expenses, amortization and depreciation**

**Art.37.-** The deduction of development costs must be spread over four (4) years if the amount thereof exceeds one million (1,000,000) CFA francs.

**Art.38.-** 1) Depreciation that is actually recognised in the accounts, within the limit of generally accepted amounts according to the customary practices of each type of industry, commerce or operations, is deductible.

The depreciation rates that are generally accepted by the administration are defined by an order of the Finance Minister.

2) The initial recognition value of the assets is the acquisition cost determined in accordance with the accounting rules; however, estimated expenses that are still contingent are excluded from the basis for depreciation.

These contingent expenses, which are estimated when the asset is acquired, are deductible for their actual amount, as from the fiscal year during which they are incurred. This deduction of expenses must be spread over five (5) consecutive fiscal years using the straight-line method.

3) The patents, licences and other intangible rights with a value of less than one million (1,000,000) CFA francs and small machinery with a unit value of less than two hundred and fifty thousand (250,000) CFA francs can be depreciated in full at the time of the acquisition thereof, if they are recognised as overheads instead of non-current assets.



4) The depreciation of passenger cars is only deductible for the fraction of their purchase price, including all taxes, that does not exceed twenty-five million (25,000,000) CFA francs. This limit applies to all vehicles that are registered in the category of passenger cars, where the use of said vehicles does not constitute the primary purpose of the commercial or industrial enterprise.

The limit defined above also applies to the portion of the lease payment paid by the lessee that corresponds to the depreciation recognised by the lessor for the fraction of the purchase price.

5) For finance leases, the finance lessee is only authorised to deduct the depreciation allowances for the non-current asset that forms the purpose of the contract, as well as the associated financing costs.

[NB - See Order n°1283/MEF/CAB/SGM/DGI/DLC/SLRI/173SGG20 of 22 May 2020 that defined the depreciation rates that are applicable for income tax matters]

**Art.39.-** 1) Accelerated depreciation can be applied to new equipment and tooling that meets the following twofold condition:

- a) is used exclusively for industrial manufacturing, material handling, hotel, telephone, transportation or farming operations;
- b) has a useful life of more than five (5) years.

2) For said equipment and machinery, the amount of the first depreciation annuity, calculated according to the normal useful life, must be doubled, and said life then reduced by one year.

**Art.40.-** 1) Enterprises can depreciate their equipment and machinery using the declining-balance method, if said equipment and machinery meets the following conditions:

- a) was purchased new for a unit value of at least ten million (10,000,000) CFA francs, excluding value added tax;
- b) can be used for more than three (3) years.

2) The declining-balance rate is obtained by adjusting the straight-line depreciation rate by a multiplier of:

- 1.5 when the useful life of the asset is three (3) or four (4) years;
- 2.0 when said useful life is five (5) or six (6) years;
- 2.5 when said useful life is more than six (6) years.

3) The amount of the first declining-balance depreciation expense is determined by applying the useful life rate, as defined above, to the cost price of the non-current asset.

The starting point for calculating the declining-balance depreciation is the first day of the month of purchase or of recognition of the asset.

The subsequent depreciation expenses are calculated by applying the chosen depreciation percentage to the cost price of the asset, minus the amount of the previous depreciation expenses.

When the amount of the declining-balance depreciation expense for a fiscal year becomes less than the result of dividing the residual value by the remaining number of years, the enterprise may then recognise depreciation that is equal to said result.

4) A specific table of the assets that are subject to declining-balance depreciation must be submitted with the annual tax return.

### **Paragraph 10 - Provisions**

**Art.41.-** 1) The following are deductible:

- a) provisions that are recognised in order to cover deductible losses or expenses, which are clearly specified, that are made probable by current events and that originate from the fiscal year concerned, provided that they are effectively recognised in the accounts for the fiscal year and included in the statement of provisions;
- b) technical provisions that are recognised by fire, accident and miscellaneous risk insurance companies, in particular provisions for unearned premiums and provisions for claims incurred but not reported, provided that:
  - they were determined in accordance with the pattern-based approach recommended by the CIMA (Conférence interafricaine des marchés d'assurances);
  - the statistical databases used are disclosed whenever requested by the revenue agent who is responsible for assessment or audit;
- c) provisions for impairment of receivables that are recognised by banks and financial institutions pursuant to the prudential standards defined by the BCEAO, provided that they are not combined with provisions that are determined on a fixed basis and without prejudice to the exercise of the right to discovery and the right of audit by the administration.

2) Provisions which, in whole or in part, are not used for their designated purpose, or become devoid of purpose during a subsequent fiscal year, are added back to the result of said fiscal year.

If the enterprise does not carry out said add-back itself, the administration may make the necessary adjustments if it finds that the provisions have become devoid of purpose; in this case, said provisions, as necessary, will be added back to the income for the oldest fiscal year open to inspection.

**Art.42.-** 1) Losses associated with loans granted by lending institutions in accordance with the prudential rules for the profession, which are classified as doubtful or disputed, in accordance with the rules of the revised banking chart of accounts, and that have not been recovered by the end of the fifth fiscal year following their classification as doubtful or disputed loans, are deductible.

Loans to the State and public bodies, and those granted to related parties within the meaning of banking regulations, are not concerned.

2) The deductibility of losses does not preclude the tax administration from exercising its right to audit lending institutions.

3) Lending institutions must monitor loans in such a way as to preserve the tax administration's right of audit and right to discovery.

4) Loans that are deemed to be impaired, as well as those that have been written off, in accordance with the rules stated in the revised banking chart of accounts, must be listed in a detailed statement that indicates the identity of the debtor, the date on which the loan or credit was granted, the initial amount, the amount still to be recovered, the amount written off, the nature and the value of the collateral, the date of the change in

the loan's classification and the status of the recovery procedure. The detailed statement must be attached to the annual tax return.

5) Losses concerning loans for which no recovery actions were taken, as well as those for which the collection actions, despite having been started, were abandoned without failing, as noted by a judicial officer, either because an amicable agreement on partial settlement was reached between the creditor and their debtor, or for any other reason that results from the bank's deliberate intention to end the proceedings, must be added back to the income that is subject to corporate income tax for the fiscal year concerned.

### **Paragraph 11 - Loss carryforwards**

**Art.43.-** 1) A loss that is reported during a fiscal year is deemed to be an expense that is deductible from the taxable profit of the following fiscal year.

2) If this profit is not sufficient for the deduction to be effected in full, the remainder of the loss must be carried forward successively to the subsequent fiscal years until the fifth fiscal year that follows that during which the loss was first recognised.

3) In order to be eligible for carryforward, the loss recognised during a fiscal year:

- a) must be substantiated;
- b) must not have already been offset from a tax standpoint;
- c) must be borne by the company, the substantive characteristics of which must remain unchanged.

4) Losses that are recognised in respect of a year during which the company is exempted from corporate income tax cannot be carried forward.

This provision is not applicable, however, to losses caused by the exemption provided for in Article 15 of this Code with regard to income from securities issued by the Republic of Benin, the Beninese public authorities and their branches.

5) An enterprise loses its right to carry forward losses when it fails to offset its losses against its first subsequent profit, even if that profit is not absorbed in full by the oldest losses.

6) Depreciation that is deferred during a loss-making period from a tax standpoint is treated in the same way as ordinary losses.

### **Paragraph 12 - Sectoral exceptions**

**Art.44.-** Deductibility rules that are different from those of Articles 30, 38 to 40 and 43 of this Code may be provided for in agreements that grant oil drilling rights.

### **Sub-section 4 - Transfer prices**

**Art.45.-** 1) For the assessment of the income tax or the corporate income tax owed by enterprises that are controlled by or that control enterprises located outside of the Republic of Benin within the meaning of paragraph 2 of this Article, profits that are indirectly transferred to said enterprises, either by increasing or decreasing purchase or sales prices, or by any other means, must be added back to the results recognised in the accounts.

Indirectly transferred profits are determined by comparison with those profits that would have been generated in the absence of a relationship of dependence or control.

- 2) Relationships of dependence or control are deemed to exist between two enterprises:
- a) when one directly, or via an intermediary, holds the majority of the share capital or voting rights of the other or has *de facto* decision-making power in that other enterprise; or
  - b) when they are both placed, under the conditions defined in section a), under the control of the same enterprise or the same person.
- 3) The condition of dependence or control mentioned in paragraph 1 of this Article does not apply when the transfer is effected with enterprises established in a foreign State or in a territory located outside of the Republic of Benin, the tax treatment of which is favourable, within the meaning of Article 30 of this Code.

### Section 3 - Calculation of the tax

**Art.46.-** 1) The rate of the tax is set at:

- a) 25% of the taxable profit for:
  - legal persons with an industrial activity, with the exception of the extractive industries;
  - private schools, universities, technical and vocational establishments;
- b) 30% of the taxable income for the legal persons other than those listed above.

2) For companies that benefit from a mining or oil agreement, the tax rate is determined by said agreement. This rate cannot however be less than the ordinary-law rate provided for in the previous paragraph.

**Art.47.-** (L.F.2023, L.F.2024) 1) The amount of the tax cannot be less than a minimum levy that is equal to:

- 10% of the cashable income for companies that predominantly deal in real property within the meaning of Article 101 of this Code;
- 3% of the cashable income for enterprises in the building and public works sector;
- 1% of the cashable income in all other cases.

2) Cashable income should be understood to mean all income that has actually given rise to a financial or cash flow or that is likely to give rise to such a flow, whether in the form of operating income, financial income or extraordinary income. Cashable income does not include self-constructed assets, inventory changes, expense transfers, and provision and depreciation reversals.

3) In all cases, the tax cannot be less than two hundred and fifty thousand (250,000) CFA francs.

4) Concerning the trade in second-hand vehicles and certain consumer goods, the amount of and the rules on the levying of minimum tax are set by regulation. For second-hand vehicles, this minimum tax payable by the importer per vehicle sold is in full discharge of liabilities.

5) For service stations, the annual amount of the tax, notwithstanding the provisions of paragraph 1 of this Article, cannot be less than that obtained by application of a single

rate of 0.60 CFA francs per litre to the volume of petroleum products sold. In all cases, the tax cannot be less than two hundred and fifty thousand (250,000) CFA francs.

These provisions are applicable to non-importer distributors of petroleum products that procure their supplies from accredited import companies, and that apply approved prices in the same way as service stations.

6) The amount of the tax will be increased by a fee of four thousand (4,000) CFA francs, paid to the Benin Office de Radiodiffusion et Télévision, which is due at the same time as the 10 March instalment provided for in Article 51 of this Code.

**Art.48.-** 1) When non-life insurance companies of all types add back to the taxable income for a fiscal year the excess amount of the provisions set aside to cover the payment of claims that arose during a previous fiscal year, they must pay a corporate income tax surcharge, which represents interest that corresponds to the increase in cash thus obtained. This surcharge does not apply to provisions that are set aside on account of reinsurance transactions.

2) The corporate income tax surcharge is equal to 5% of the amounts added back.

It must be reported and paid annually at the same time as the balance of the insurance company's corporate income tax.

3) The conditions of application of this Article will be specified by a regulation.

## Section 4 - Filing and payment

### Sub-section 1 - Filing obligations

**Art.49.-** 1) Taxpayers who are subject to corporate income tax must, at the latest on 30 April of each year, file a tax return to report their income for the previous fiscal year.

Enterprises that benefit from exceptional tax treatment are under the same obligations.

2) This return must be submitted to the relevant revenue agent for the location of the taxpayer's registered office or principal place of business in the Republic of Benin.

**Art.50.-** (L.F.2024) The taxpayers referred to in the preceding article 49 must file, in support of their annual return:

1) The documents that were used to calculate their profit for the previous year or fiscal year, in particular:

- a) the annual financial statements, including the balance sheet, the income statement, the cash flow statement and the notes to the financial statements, prepared and presented in accordance with the provisions of Articles 25 to 34 of the OHADA Uniform Act on accounting law and financial reporting. For credit and microfinance institutions, financial market participants, insurance and reinsurance companies, social security and welfare organisations and non-profit entities not subject to the OHADA accounting system, the financial statements shall be prepared and presented in accordance with the specific accounting framework applicable to each sector of activity;

- b) the detailed list of overheads by category;
- c) a table of depreciation and provisions set aside from profits, with a precise indication of the purpose of such depreciation and provisions;
- d) a statement of the sales of balance sheet assets.

2) A statement drawn up in triplicate that presents the following information with the utmost clarity:

- a) the turnover for the fiscal year, broken down:
  - by the type of goods sold, with a distinction between wholesale sales and retail sales;
  - by the type of work carried out for customers, with a distinction between fitting work and repair work;
  - by the type of various profits or incidental income generated;
- b) the amount of the purchases for the fiscal year, broken down by the type of goods purchased, including customs duties;
- c) the cost price value of the inventories at the beginning and end of the fiscal year, broken down by the nature of the goods in stock;
- d) the list of the personnel and the amount of the salaries paid during the fiscal year;
- e) the amount of the depreciation, amortization and impairment expenses for the fiscal year;
- f) the net amount of the results for the fiscal year before loss carryforwards and after loss carryforwards;
- g) the detailed statement of lease payments recognised as overheads.

3) The reports on and excerpts from the decisions of the boards of directors or the shareholders that provide for the distribution of dividends, and, within one month of the dates thereof, if the decisions occur after the deadline for filing tax returns has expired, a statement showing the profits allocated among the partners, shareholders or unit holders, as well as the payments or securities issued during the period used for the corporate income tax base and that constitute distributed income within the meaning of Articles 69 et seq. of this Code.

4) The statement of the entries in the partners' or shareholders' current accounts during the fiscal year, and a list of the interest paid in respect of receivables, deposits and collateral, with the identity and the address of the beneficiaries.

5) The names and addresses of the accountant(s) or chartered accountant(s) who are responsible for keeping their accounts or for calculating or auditing the overall results, stating whether these technical advisors are employees of their enterprise.

They may attach to their return the key observations and findings that may have been provided to them by the accountants, chartered accountants or all other independent auditors whom they tasked, within the limits of their fields of expertise, with preparing, auditing or reviewing their financial statements.

6) Enterprises whose registered office is located outside of national territory are required to file two copies of their financial statements, at the same time as their annual tax return.

7) Holding or parent companies are required to file, at the latest two (2) months after their annual tax return, the consolidated financial statements for the group that is made up of all the enterprises that they control.

8) Insurance, reinsurance, investment or savings companies are required to file two copies of the detailed accounts and the appended tables that they submit to the insurance audit authority, at the same time as their annual tax return.

### Sub-section 2 - Payment

**Art.51.-** 1) Corporate income tax must be paid in four (4) instalments determined provisionally on the basis of the tax for the previous year.

The payments must be paid at the latest on the tenth of March, June, September and December of each year.

2) The amount of each instalment must be equal to one-quarter of the tax owed the previous year.

However, in the event that the return for the previous fiscal year has not yet been filed, the first instalment that must be paid by 10 March should be calculated provisionally on the basis of the tax (owed or paid) in respect of second-to-last previous fiscal year. When the second instalment is paid, the amount of said first instalment must be adjusted on the basis of the previous fiscal year.

3) The balance of the tax owed must be paid on the date on which the annual return is filed.

If the instalments or payments are higher than the taxes assessed, the difference will be regarded as a tax credit that can be offset against subsequent instalments of corporate income tax and tax arrears, if any.

**Art.52.-** 1) When a taxpayer believes they can provide proof that the total amount of the corporate income tax they are required to pay in respect of a given year should be lower than the total amount of the instalments they owe, they may, one (1) month before the due date of the instalment for the quarter concerned, submit an instalment reduction application to the Director General of Taxes.

2) The application must set out the reasons why the taxpayer believes the amount of the corporate income tax for the current year should be less than the amount of the instalments that they owe for said year.

3) The Director General of Taxes may, upon verification, issue an authorisation to reduce the instalment or grant an instalment exemption, fifteen (15) days at least before the due date of the instalment for the quarter in which the application was made. A copy of this authorisation or exemption must be sent to the authority that is responsible for collection.

4) The Director General of Taxes is empowered to refuse an instalment reduction application if the taxpayer has not settled their tax debts in full on the date of the application.

5) If the Director General of Taxes believes that they are in possession of enough information to issue a clearly reasoned refusal in response to an instalment reduction application, either pursuant to paragraph 4 of this Article, or for any other reason, they must notify this refusal by letter within fifteen (15) days of receipt of the application. Thereafter, the taxpayer's application will be deemed to have been tacitly accepted.

6) When the Director General of Taxes has given their formal or tacit agreement to an instalment reduction application submitted by the taxpayer, the latter must pay their instalments for the current year on the dates and in accordance with the percentages provided for in Article 51 of this Code; each instalment will then be calculated on the amount of tax that the taxpayer believes is owed, as specified in the taxpayer's application.

7) When the declaration made in order to obtain a reduction of instalment payments is found to be inaccurate by more than 10%, the taxpayer will be liable to a penalty equal to 20% of the difference observed.

8) For the purposes of this Article, the Director General of Taxes may delegate their power.

### **Sub-section 3 - Winding-up, conversion, registered office transfer**

**Art.53.-** In the event of winding-up, a conversion that leads to the creation of a new legal person, a contribution to a company, a merger that does not benefit from favourable tax treatment, or the transfer of a registered office or an establishment to another country, the corporate income tax will be assessed under the conditions provided for in Article 476 of this Code.

## **Chapter 2 - Tax on business profits**

**Art.54.-** The profits generated by natural persons who habitually carry on a for-profit business activity, by means of self-employment, are liable to an annual tax known as the tax on business profits.

### **Section 1 - Scope of application**

**Art.55.-** The following constitute taxable operations in respect of the tax on business profits, unless one of the exemptions provided for in Article 58 below applies:

- 1° industrial, commercial and artisanal profits;
- 2° the profits generated by farmers, livestock farmers and fish farmers, as well as the profits generated by persons who research and obtain new plant varieties;
- 3° the profits of independent professionals and of professional practices and bureaus, the owners of which do not have the capacity of trader;
- 4° income from intellectual or industrial property rights;
- 5° and, in general, profits and revenues from all for-profit operations or ventures, that are received on a habitual or exceptional basis, which do not fall within the scope of application of the tax on wages and salaries, the tax on income from investments, the tax on income from property or the tax on real property capital gains.

**Art.56.-** The following revenues are also liable to the tax on business profits, namely revenues:

- 1° from the leasing out of a commercial and industrial establishment that has the equipment and fittings needed for the operation thereof, regardless of whether or not the lease includes all or part of the intangible assets of the commercial or industrial concern;



- 2° operations in the capacity of intermediary for the purchase or sale of real property or going concerns;
- 3° the purchase of real property with a view to the resale thereof, on a habitual basis;
- 4° the subdivision of land with a view to the resale thereof.

**Art.57.-** Without prejudice to the provisions of Article 101(2) of this Code, the members of partnerships that are not liable to corporate income tax and undivided co-owners are personally liable for the tax on business profits for the portion of the business profits that correspond to their rights in the partnership or their shares of the co-ownership.

**Art.58.-** The following are exempted from the tax on business profits:

- 1° farming, livestock and fishing activities;
- 2° the income of painters, sculptors, engravers, designers and other persons who are regarded as artists and who only sell the products of their art;
- 3° the income of musicians, actors and other artists, for their performances;
- 4° the income generated by funds placed under management for a minimum duration of three years with venture capital firms;
- 5° gains derived from the practice of gambling;
- 6° taxpayers who are liable to the composite business tax.

**Art.59.-** The taxable profit is determined taking into account solely the profits generated in the Republic of Benin as well as profits, taxation of which is attributed to the Republic of Benin by an international double taxation convention, under the conditions provided for in Articles 5 and 6 of this Code.

## Section 2 - Computation of taxable profit

**Art.60.-** 1) The profits that are liable to the tax on business profits are computed in accordance with the rules defined for corporate income tax.

2) However:

- a) depreciation can only be recognised using the straight-line method;
- b) losses can only be carried forward for three (3) years.

3) The following are deductible:

- a) the salary of the proprietor's spouse who in practice works in the business, provided that the salary is not abnormally high and gave rise to the payment of contributions to the social security scheme and was made subject to withholding taxes;
- b) the remunerations paid to the other members of the proprietor's family, under normal conditions, provided that said remunerations are in fact paid and correspond to actual work;
- c) voluntary payments that are made by the proprietor to a pension fund and the life insurance premiums paid by the proprietor within the limit of 5% of the amount of the profit prior to the deduction of the amount of said payments.

4) For mixed expenditure that is not broken down on the basis of adequate supporting documents that confirm the calculation of the portion allocated to the business activity, the business-related portion is assessed at 30%.

5) Where the proprietor recognises real property as part of their enterprise's assets, the associated income and expenses to be taken into account for computing the taxable

profit will depend on the relevance of said property to the pursuance of the professional activity.

If there is no relevance or only partial relevance, the profit must be reduced by the amount of the income that does not originate from the activity performed on a professional basis, excluding the income taken into account for computing the capital gain or loss upon disposal of a capitalised asset, and increased by the amount of the expenses that are eligible for deduction in full or proportionately to the use for professional purposes.

The income thus deducted from the business profit is liable to the tax on income from property.

If the real property does not generate income, the associated expenses are not deductible.

**Art.61.-** The following are not deductible:

- 1° the amounts that individual sole proprietors deduct from their business revenues as remuneration for their personal work;
- 2° expenses incurred in the personal interest of the proprietor;
- 3° interest on the capital invested by the proprietor and amounts of all types paid as remuneration for the enterprise's equity, whether capitalised or appropriated to reserve accounts.

**Art.62.-** 1) In the event of the proprietor's death, the taxation of the capital gain on the going concern (tangible and intangible assets), where the proprietorship is continued by the direct heirs or by the spouse, is deferred until the disposal or discontinuance of the proprietorship by said heirs and/or spouse, provided that the valuations of the assets recognised on the last balance sheet prepared by the late proprietor are not increased.

2) This provision shall remain applicable when, following the partition of the estate, the proprietorship is continued by the direct heir(s) or by the spouse to whom the going concern was transferred, as well as in the event that the direct heirs and the spouse form between them, exclusively, a partnership that is not subject to corporate income tax, provided that the values of the assets that were recognised at the time of death are not increased at the time of the partition or when the proprietorship is converted into a partnership.

### Section 3 - Calculation of the tax

**Art.63.-** 1) The tax is calculated by applying a rate of 30% to the basis of assessment.

2) This rate is reduced to 25% for private school, university, technical and vocational teaching establishments.

**Art.64.-** (L.F.2024) 1) The amount of the tax cannot be less than a minimum tax levy equal to 1.5% of the cashable income, as defined in Article 47 of this Code.

2) By way of derogation from the provisions of paragraph 1 of this Article:

- a) the minimum tax levy is equal to 3% of the cashable income for enterprises in the building and public works sector;

- b) the minimum tax levy is equal to 10% of the cashable income for enterprises that predominantly deal in real property within the meaning of Article 101(2) of this Code;
- c) the amount and methods of collection of the minimum tax levy are set by regulation for trade in second-hand vehicles and certain consumer goods. In the case of used vehicles, this minimum tax levy is payable by the importer for each vehicle sold, in full discharge of all liabilities.

3) a) The tax cannot, under any circumstances, be less than five hundred thousand (500,000) CFA francs.

b) For the managers of service stations, the minimum tax levy cannot be less than that obtained by the application of a single rate of 0.60 CFA francs per litre to the volume of petroleum products sold. These provisions are applicable to non-importer distributors of petroleum products that procure their supplies from licensed import companies, and that apply approved prices in the same way as service stations. In all cases, the tax cannot be less than two hundred and fifty thousand (250,000) CFA francs.

4) The amount of the tax will be increased by a fee of four thousand (4,000) CFA francs, paid to the Benin Office de Radiodiffusion et Télévision, which is due at the same time as the 10 March instalment provided for in Article 51 above.

**Art.65.-** The amount of the tax will be halved for:

- 1° persons who work at home, by means of hand or machine labor, regardless of whether or not they own their work equipment, where they operate exclusively on the basis of contract work, for manufacturers or traders, with the raw materials said manufacturers or traders provide, and where they use no assistance other than that of their spouse, their father and mother, their children and grandchildren, a journeyman and an apprentice under the age of eighteen (18), with whom a proper apprenticeship contract was signed;
- 2° skilled tradespersons who work at home or outside and who primarily engage in the sale of the product of their own work and who do not use any assistance other than that of the persons listed in the preceding paragraph.

#### Section 4 - Filing and payment

**Art.66.-** (L.F.2024) Tax on business profits is declared and paid in the same way as corporate income tax. Legal entities not subject to corporate income tax pay tax on business profits on behalf of their partners under the conditions set out in Article 51 of this Code.

**Art.67.-** 1) The business profits received on a professional, habitual basis must be recognised using accrual accounting, in accordance with the accounting law in force.

2) However, taxpayers who pursue an independent profession, a non-commercial activity or who manage intellectual or industrial property and who wish to compute their taxable income using cash accounting, must make an election before 30 November of the year prior to that for which the election is made. It will take effect starting on 1 January of the year following that of the application and is renewable tacitly, unless notice is served before 30 November of the second year.

3) When a taxpayer simultaneously generates industrial and commercial profits, and non-commercial profits, the results of these operations must be determined using the rules provided for in paragraph 1 of this Article.

### Chapter 3 - Tax on income from investments

**Art.68.-** The tax on income from investments applies to:

- 1° securities income;
- 2° income from receivables, deposits, guarantees and current accounts;
- 3° capital gains on disposals of securities.

#### Section 1 - Scope of application

##### Sub-section 1 - Taxable income

##### *Paragraph 1 - Securities income*

**Art.69.-** The tax on income from investments is levied on:

- 1) The dividends, interest, arrears, revenue and all other income from shares of all types distributed by companies that are subject to corporate income tax.
- 2) Interest, income and proceeds from ownership interests and equity in companies that are subject to corporate income tax and have their registered office in the Republic of Benin, the capital of which is not divided into shares.
- 3) The amount of the total or partial reimbursements and redemptions that the companies defined in sections 1 and 2 above effect on the amount of their shares, ownership interests or equity, before they are wound up or liquidated.
- 4) The remuneration paid to chief executives or members of the boards of directors of corporations or simplified joint-stock companies pursuant to Articles 431 and 501 of the OHADA Uniform Act on commercial companies, with the exception of remuneration paid in respect of positions for which there is an employment contract.
- 5) The income paid to non-members of cooperative-type decentralised financial systems and to members of mutual-type decentralised financial systems who have not acquired at least one equity interest.
- 6) The income paid to members of the governing boards of non-profit organisations and associations.
- 7) Amounts loaned to partners or shareholders, directly or via an intermediary, in the form of advances, loans or payments on account.
- 8) Undeclared remunerations, within the meaning of Article 34 above.
- 9) Expenses that are not deductible for the purposes of corporate income tax and that were actually paid, directly or indirectly, to a shareholder or partner or to a company that is a member of the same group, within the meaning of Article 45(2) above, regardless of

whether or not said expenses were added back by the taxpayer or adjusted by the tax administration.

Where an adjustment results in a reported loss being substituted by a positive balance, the presumption of distribution will apply solely to the extent of the fraction of the adjustment on which corporate income tax was in fact levied. The fraction of the adjustment that reduced or cancelled the reported loss is only liable to be taxed as distributed income if the tax administration provides proof that the shareholders or partners received the amounts thus added back.

10) The profits and reserves, whether capitalised or not, of legal persons who are discontinuing their business activity. From a tax standpoint, the following are deemed to constitute discontinuance of a business activity:

- a) the transfer of the registered office of a Beninese company outside of national territory;
- b) no longer being subject to corporate income tax;
- c) all the shares of a company other than a simplified joint-stock or limited liability company being transferred to a single shareholder.

The tax will be payable, as applicable, in proportion to the results that cease being subject to said tax.

11) Capital gains on direct or indirect disposals of securities.

A disposal is deemed to be a transfer, with or without valuable consideration, that leads to a change in the ownership of the securities, regardless of the method used, in particular, sale, swap, contribution to a company, distribution of securities, gifts and estates.

12) The profits of permanent establishments that are subject to corporate income tax, which are deemed to be distributed to non-resident companies in respect of each fiscal year.

The dividends, arrears, profits and proceeds referred to in paragraphs 1 and 2 of this Article are defined as all monies or securities allocated at any time whatsoever to the shareholders and unit holders, for a purpose other than the redemption of their contributions.

**Art.70.-** Taxpayers who are subject to corporate income tax and who, directly or indirectly, pay to persons whose identity they do not disclose, commissions, brokerage fees, commercial or other rebates, incentives and other remuneration, will be subject to the tax on income from investments on the basis of the total amount of said sums.

The application of the tax on income from investments to said taxpayers does not preclude the taxation of the amounts referred to above, in the name of the beneficiaries thereof, where they can be identified by the administration.

### ***Paragraph 2 - Income from receivables, deposits and guarantees***

**Art.71.-** The following are deemed to be income from receivables, deposits and guarantees for the application of the tax on income from investments:

1) Interest, arrears and all other income:

- a) from mortgage, secured and unsecured debts, excluding all commercial transactions that do not have the legal nature of a loan;

- b) from term or time deposits of money, regardless of the custodian and regardless of how the deposit is invested;
- c) from cash guarantees;
- d) from current accounts;
- e) from fixed deposit receipts.

2) The interest, arrears and all other income from bonds and debentures of all types issued by the State, local authorities, public institutions and commercial companies that have the power to issue bonds.

“Debentures of all types” should be understood to mean all operations by means of which a legal person procures, in any way whatsoever, by public offerings or otherwise, the funds it needs, even if the debentures are not evidenced by securities or are represented by securities that are not marketable bonds.

3) The prizes and redemption premiums paid to creditors and to the bearers of bonds issued by Municipalities, Departments and public institutions, as well as the companies and enterprises referred to in paragraphs 1 and 2 of this Article.

## Sub-section 2 - Exemptions

### *Paragraph 1 - Securities income*

**Art.72.-** The following are exempt from the tax on income from investments:

- 1° capital gains from disposals of securities that were recognised on the balance sheet of an enterprise that is subject to the tax on business profits or to corporate income tax;
- 2° income from securities issued by the Republic of Benin, the Beninese public authorities and their branches.

### *Paragraph 2 - Redemption of capital*

**Art.73.-** (L.F.2024) 1) The following are exempt from the tax on income from investments:

a) Redemptions that are brought about by a liquidation of assets and by means of deductions from items other than the income statement, the reserves or the provisions entered on the balance sheet.

b) For companies that hold concession contracts awarded by the State or local authorities, the redemption by repayment of all or part of their share capital, ownership interests or equity, if this is justified by progressive decline or by an obligation to transfer capital to the awarding authority at the end of the concession.

Article 97 of this Code defines the conditions under which, in each case, a transaction is confirmed to be a redemption, and the exemption is legitimate.

c) Distributions which, for associates or shareholders, have the character of reimbursements of contributions or share premiums. A distribution is however deemed to have this character only if all profits and reserves other than the legal reserve have been distributed beforehand. For the purpose of this provision, depreciation and provisions that are not deductible from corporate income tax are treated as profits. Reserves incorporated into capital and sums incorporated into capital or reserves (merger or demerger premiums)

at the time of a merger or demerger of companies or a partial contribution of assets giving rise to the allocation of shares to shareholders are not considered as contributions.

2) When shares are redeemed by one of the means not expressly excluded by paragraph 1 of this Article and when the company is liquidated, the allocation of the assets between the holders of dividend shares commensurately with the par value of the original shares will be regarded as a redemption of capital that is not liable to the tax on income from investments.

### ***Paragraph 3 - Distribution in the form of increases in capital***

**Art.74.-** 1) The following are exempted from the tax on income from investments:

- a) distributions of reserves in the form of increases in capital;
- b) profits that are directly capitalised.

2) However, when these distributions follow a reduction in capital that was not caused by company losses or any transaction of any kind involving the direct or indirect redemption, with the benefit of exemption from the tax on income from investments that occurred less than ten (10) years previously, they can only benefit from the exemption stipulated by paragraph 1 above if, and to the extent that, the resulting increase in capital exceeds the capital redeemed.

3) When the distributions are followed, within the time-limit of ten (10) years, by a reduction in capital that is not caused by company losses or by a transaction of any kind that involves the tax-free direct or indirect redemption of the capital, they will lose the benefit of the exemption for an amount equal to the amount of the redemption, and the chargeable taxes must be paid at the latest on the tenth of the month following that of the event that triggered the loss of exemption.

### ***Paragraph 4 - Mergers, de-mergers and spin-offs***

**Art.75.-** 1) The capital gains that result from the allotment of bonus shares, equity interests or bonds following mergers of joint-stock or limited liability companies, are exempted from the tax on income from investments.

2) The same treatment is applicable when a joint-stock or limited liability company contributes:

- a) some of its assets to another company that is incorporated in one of these forms;
- b) all of its assets to two or more companies incorporated for this purpose, in one of said forms.

3) However, if during the ten (10) years prior to the merger, the capital of the absorbed company or of the former companies is reduced for a reason other than company losses, the capital gains cannot benefit the exemption that exceeds the amount of the reduction.

4) If, during the ten (10) years following the merger, a reduction in capital is carried out for a reason other than company losses or a total or partial redemption of the bonds that were allotted free of charge, the capital gains will lose, commensurately with the portion of the capital used to redeem the shares, equity interests or bonds allotted free of charge, the exemption from which they had benefited, and the taxes owed must be paid by the

absorbing or new company at the latest on the tenth day of the month following that during which the redemption occurred.

#### ***Paragraph 5 - Tax treatment of parent companies and subsidiaries***

**Art.76.-** 1) The dividends distributed by a parent company, for each fiscal year, will be exempted from the tax on income from investments, to the extent of the net amount, after deduction of the tax on income from investments, of the income from the shares or equity interests of its subsidiaries that the parent company received over the course of the fiscal year.

2) The benefit of the application of this treatment is contingent on meeting the following conditions:

- a) the parent company and the subsidiary are incorporated in the form of joint-stock or limited liability companies;
- b) the parent company has its registered office in the Republic of Benin;
- c) the subsidiary has its registered office in the Republic of Benin or in a State that has signed a double taxation convention with Benin;
- d) the shares or equity interests owned by the parent company represent at least 20% of the subsidiary's capital. However, this rate is decreased to 5% when the purpose of the subsidiary is mineral exploration or mining in a State that has signed a double taxation convention with Benin and that is included on a list defined by a decree issued following consultation of the Beninese Council of Ministers;
- e) the shares or equity interests have been subscribed or allotted at the time of issue and are still held by the company, or have been held for at least two (2) consecutive years, in registered form.

3) In the event of a merger, the benefit of the preceding provisions is transferred, as of right, from the absorbed company to the absorbing or new company; the same provisions are also applicable to Beninese companies that have a stake in the absorbed company for registered shares or the equity interests of the absorbing or new company they received without having subscribed for them at the time of issue, to replace the shares or equity interests of the absorbed company, in which case it will be their responsibility to prove that the shares or equity interests of the absorbed company were subscribed at the time of issue and have always been registered in the name of the company or that they were acquired at least two (2) years before the distribution of the dividends and other income that may be exempted.

#### ***Paragraph 6 - Securities portfolio management companies***

**Art.77.-** Dividends distributed by companies, the exclusive purpose of which is the management of a portfolio of securities, the by-laws of which, including any amendments thereto, were approved by the Finance Minister, will, for each fiscal year, be exempted from the tax on income from investments to the extent of the net amount of the income received over the course of the fiscal year from the shares, equity interests and bonds they hold, provided that they prove that said income was made liable to the tax on income from investments.

#### ***Paragraph 7 - Undertakings for Collective Investment in Transferable Securities - investment and capital risk firms***

**Art.78.-** The following are exempted from the tax on income from investments:



- 1° the income distributed by Undertakings for Collective Investment in Transferable Securities and the other forms of collective investment approved by the Conseil Régional de l'Épargne Publique et des Marchés Financiers;
- 2° the capital gains that result from disposals of units or shares in Undertakings for Collective Investment in Transferable Securities, investment firms or any other form of collective investment approved by the Conseil Régional de l'Épargne Publique et des Marchés Financiers that are effected by their members;
- 3° the securities income from closed-end investment funds, for a period of fifteen (15) years as from the date on which they were founded;
- 4° the capital gains on disposals of securities held by closed-end investment funds, where the securities divested were retained in their portfolios for a minimum period of three (3) years as from their date of acquisition;
- 5° the capital gains on disposals of securities that are reinvested in other securities, for a period of twelve (12) months as from the disposal, regardless of the length of time for which they were kept in the fund's portfolio.

#### ***Paragraph 8 - Benin Caisse des Dépôts et Consignations***

**Art.79.-** The following are exempt from the tax on income from investments:

- 1° securities income generated by the equity interests of the Benin Caisse des Dépôts et Consignations;
- 2° capital gains on disposals of securities held and on securities reinvested in other securities.

#### ***Paragraph 9 - Income from receivables, deposits and guarantees***

**Art.80.-** The following are exempt from the tax on income from investments:

- 1) Interest on amounts deposited on passbook savings accounts.
- 2) Interest and all other income generated by accounts opened with lending institutions in the name of the Caisse Nationale d'Épargne.
- 3) Interest and other income paid by the Benin Caisse des Dépôts et Consignations as part of its public interest role.
- 4) The interest, arrears and all other income from current accounts included in the revenues from the pursuit of an industrial, commercial or agricultural or mining profession, subject to the twofold condition:
  - a) that the contracting parties both have the capacity of manufacturer, trader, farmer or miner;
  - b) that the transactions entered in the current account are linked exclusively to the industry, trade or operations of both parties.
- 5) The debentures or bonds of cooperative companies.
- 6) The ownership interests, debentures or bonds of agricultural cooperative companies or unions of agricultural cooperative companies and agricultural associations.
- 7) Loans taken out by the central branches of the Crédit Agricole Mutuel.
- 8) Interest, arrears and all other income generated by current accounts opened with lending institutions on behalf of Crédit Agricole Mutuel branches. This exemption is not

extended to the interest on deposits made by the non-members of said branches. It applies to cooperative fishing and livestock companies and to their unions.

9) Interest, arrears and all other income:

- a) pensions, bonds and other government securities issued by the Republic of Benin, the Beninese public authorities and their branches.
- d) loans taken out by the State, local authorities and public institutions with the Caisse des Dépôts et Consignations.

10) The bonds and debentures that have been or will be issued by low-cost housing associations, as well as the loans granted or deposits made by such associations.

11) The interest, arrears and other income from loans granted in any form whatsoever:

- a) by persons who pursue the banking trade or a profession associated therewith, as well as by Beninese companies by means of the funds they obtain by taking out loans that are themselves subject to the tax on income from investments;
- b) by associations that are founded with a view to making available to their members or similar associations with which they are affiliated the funds that they obtain by taking out loans or collecting deposits.

The amount of the exempted loans cannot exceed that of the loans taken out or of the deposits collected, and proof thereof must be provided by the company, the person or the association.

12) The income from loans that are not represented by marketable securities, as well as the income referred to in Article 71 of this Code, where said income is received by and on behalf of bankers or financial institutions, investment or securities management firms, as well as by and on behalf of companies that are authorised to engage in property loan transactions by the government.

However, this exemption does not apply to income from transactions effected by the aforementioned persons or institutions using their own funds.

The provisions of paragraph 11 above are not applicable to the persons and establishments referred to in this paragraph.

13) The interest and all other income generated by the investments made by the Benin Caisse Autonome d'Amortissement and Caisse des Dépôts et Consignations.

14) The income distributed by closed-end investment funds in respect of the funds under management entrusted to them for a minimum duration of three (3) years.

15) The advances paid to companies by means of endorsing bills.

16) The interest and other income paid by life and endowment insurance companies for contracts with a term of five (5) years at least at their maturity. Those concerning surrendered or terminated contracts are not exempted from tax.

### Sub-section 3 - Territoriality

**Art.81.-** Tax is payable if the income from investments is paid by an enterprise operated in the Republic of Benin or received by an enterprise operated or by a person domiciled in the Republic of Benin.

## Section 2 - Tax base

### Sub-section 1 - Securities income

**Art.82.-** Tax is payable, regardless of whether or not the amounts or payments allotted were drawn from the profits.

In companies with a sole shareholder, the excess of the equity over the issued capital is deemed to have been distributed.

**Art.83.-** The basis of assessment is determined:

- 1) For shares, by the dividend set according to the decisions of the general meetings of shareholders or of boards of directors, the minutes or all other similar documents.
- 2) For bonds or debentures, by the interest or the income distributed during the year.
- 3) For partnership shares and equity interests, either, by the decisions of the general meetings of the partners or of the boards of directors or, in the absence of a decision, by means of a return to be filed within three (3) months of the close of the fiscal year, which states the profits or income that were in fact distributed.
- 4) For lottery bond prizes, by the actual amount of the prize.
- 5) For redemption premiums, by the difference between the amount redeemed and that which results from the application of the debenture issue price.
- 6) For the remuneration of the chief executive or members of the boards of directors of companies, by the decisions of the general meetings of shareholders or of the boards of directors, the minutes or other similar documents.
- 7) For the capital gains on disposals of securities, by the difference between the disposal price and the purchase price.

The disposal price and the purchase price to be used are the actual prices, as stipulated in the corresponding instrument. If the asset was acquired or disposed without valuable consideration, the price to be used for the calculation of the capital gain is the market value of the asset on the date of the transfer without valuable consideration.

- 8) For constructive dividends paid by permanent establishments, by the amount of the book profits, less the amount of corporate income tax.
- 9) For other revenues that fall into the category of distributed income, by all the items determined by the administration.

**Art.84.-** 1) Where the bonds, government securities and all other debt securities, the prizes and redemption premiums of which are liable to the tax on income from investments, were issued at a fixed rate, this rate will be used to assess the tax on the premiums.

2) If the rate is floating, it will be determined, for each issue, by an average calculated by dividing the amount of the total issue by the number of securities that correspond to the issue concerned, minus solely any arrears that have accrued at the time of each sale.

3) For floating rate debentures that have not yet matured, the average will be established using the debenture status at 31 December of the year which precedes that of the redemption.

4) When the rate cannot be established in accordance with paragraphs 1, 2 and 3 of this Article, said rate will be represented by a principal made up of twenty (20) times the annual interest specified when the debenture was issued to the bearer.

5) If an interest rate is not specified, it will be set by an estimated return submitted in the manner provided for by the regulations.

### Sub-section 2 - Income from receivables, deposits and guarantees

**Art.85.-** 1) The basis of assessment is made up of the gross amount of the interest, arrears, and all other securities income referred to in Article 71 of this Code.

2) Tax will be triggered simply as a result of:

- a) either, the payment of interest, irrespective of the way in which it is paid;
- b) or, the recognition of interest as a debit or credit entry in an account, either of the debtor or of the creditor.

A debit or credit entry in an account is defined as the recognition of interest in the debtor's ledgers or in the account of the creditor (either a natural person or a legal person), even if the amounts concerned have not yet been paid.

### Section 3 - Rates

**Art.86.-** For securities income other than bonds, the tax is calculated as follows:

- 1° 5% for:
  - dividends distributed to shareholders who are not residents of the Republic of Benin, unless a double taxation convention between the Republic of Benin and the country of said shareholders provides for a more favorable tax rate. In this case, the beneficiary must provide proof to the debtor or the person who pays the income that they are the beneficial owner of said income, which must not be exempted from tax;
  - dividends distributed by companies that are listed on a stock market approved by the Conseil Régional de l'Épargne Publique et des Marchés Financiers for the West African Economic and Monetary Union (WAEMU);
  - the capital gains generated by disposals of shares by individuals or legal persons who are non-residents;
- 2° 10% for:
  - dividends other than those mentioned in paragraph 1 of this Article;

- the profits of permanent establishments, as mentioned in Article 69(12) of this Code;
- 3° 15% for all other types of taxable income.

**Art.87.-** For income from bonds, the rates are set as follows:

- 1° 6% for income from bonds and for prizes and redemption premiums paid to creditors and to bond holders. However, the government is authorised to set, by a regulation, an applicable rate that is less than 6% when the bonds are issued for five (5) years or more and are issued in order to finance investments in priority sectors;
- 2° 3% for income from bonds issued by the Member States of the WAEMU, by the public authorities or by their branches, where said bonds are issued for periods of between five (5) years and ten (10) years. This rate is set at 0% when the bonds are issued for more than ten (10) years;
- 3° 5% for the capital gains generated by disposals of bonds.

**Art.88.-** For income from receivables, deposits and guarantees, the tax is calculated by applying a rate of 15% to the basis of assessment.

**Art.89.-** If the income is paid to a natural or legal person who is a resident of a country with which the Republic of Benin has signed a double taxation convention, the applicable rate is that provided for by the convention if it is less than the rate set by Article 88 above, provided that said person provides proof to the debtor or to the person who is responsible for paying the income that the person who receives the income is the beneficial owner of said income, which must not be exempted from tax.

#### Section 4 - Filing and payment

**Art.90.-** 1) The persons who pay taxable income must withhold the tax.

2) For taxpayers other than those who are subject to corporate income tax or the tax on business profits in the Republic of Benin, the withholding entails discharge from all other taxes or charges on the same income.

**Art.91.-** 1) The tax must be paid at the latest on the tenth of the month following that during which the taxable income was paid out.

However, for dividends, the distribution of which was approved by a general meeting, the tax must be paid at the latest on the tenth of the month following that during which the meeting was held.

2) In support of the payment, the taxpayer must file a form with the relevant tax office that shows, for the preceding month:

- a) the total of the amounts in respect of which the tax is payable;
- b) the amount of the tax that is payable.

**Art.92.-** 1) Banks or finance companies must keep a specific register in which the following information is recorded, in separate columns:

- a) the name of the holder of any account that accrues taxable interest and, if applicable, the number or reference of the account;
- b) the amount of the taxable interest;
- c) the date on which it was entered in the account.

2) The amount of tax to be paid by the taxpayer must be computed at the end of each month, using the information contained in the specific register.

**Art.93.-** 1) The tax payable on the foreign-source taxable income must be paid by the beneficiary to the relevant tax office at the latest on the tenth of the month following that during which said income was received.

2) This statement may be filed in the name of the creditor of the interest, within the same time-limits, by the *notaire* in whose offices the interest was paid.

3) In support of this payment, a statement must be filed that includes:

- a) the origin of the receivable (official deed or private instrument, with the date thereof and the registration date, a judgment, and all other relevant information);
- b) the amount of the interest and other income received over the course of the past year;
- c) the amount of the tax due;
- d) the period to which the interest paid applies and, if applicable, the amounts of any interest that was not paid at the stipulated times.

## Section 5 - Taxpayers' obligations

### Sub-section 1 - Common obligations

**Art.94.-** 1) Any person, company or partnership that, on a professional basis, pays interest, dividends, revenues and other income from securities or whose profession includes, on an ancillary basis, operations of this kind, is required to declare, on 30 April of each year at the latest, the amounts paid by them in any form whatsoever, upon presentation or redemption of coupons or of instruments that represent coupons, failing which the penalty provided for in Article 496 of this Code will apply. This declaration must state, for each creditor, their surname and first names, their actual home address and the net amount of the payments they received.

2) The same obligations apply to the local authorities for the dividends and interest on their own shares, equity interests or bonds that they pay to persons or companies other than those who are responsible for paying their coupons.

3) The coupons that are presented will, unless proven otherwise, be deemed to be the property of the creditor. In the event that the creditor presents coupons on behalf of a third party, the creditor has the option of submitting to the paying establishment a list stating, in addition to their surname, first names and actual domicile, the surname, first names and actual domiciles of the actual owners, as well as the amount of the coupons that belong to each of them. The paying establishment must append this list to the declaration provided for by paragraph 1 of this Article.

Any person who is convicted of receiving, in their name, coupons that belong to third parties with a view to causing said third parties to avoid the application of the tax on income from investments or corporate income tax, is liable to the tax penalties provided for in Article 503 of this Code.

**Art.95.-** 1) The public administrations, the establishments or agencies that are under the control of the administrative authority, and all natural or legal persons, which are

domiciled or established in the Republic of Benin and habitually receive deposits of securities, stocks or cash, must declare to the tax administration the opening, closure and modification of the accounts of all types that they manage.

2) The declarations of account openings, closures and modifications must be made using an electronic file, the format of which will be notified by the administration. Said declarations must include the following information:

- a) the name and address of the establishment that manages the account;
- b) the account name, number, nature, type and characteristics;
- c) the date and the nature of the operation declared: opening, closure or modification, making a distinction as to whether said operation affects the account itself or its holder;
- d) for natural persons; their surname, first names, date and place of birth, unique tax identifier number and address;
- e) for legal persons; their corporate or trade name, legal form, unique tax identifier number and address.

3) Declarations of account openings, modifications and closures by the establishments, agencies, natural or legal persons who manage these accounts must be filed at the latest by the tenth of the month following that of the opening, closure or modification.

4) Each year, at the latest on 30 April, the establishments referred to in paragraph 1 of this Article are required to send the tax administration, in an electronic file, a statement of the coupons issued during the preceding year to the holders of deposit accounts for securities, stocks or cash, advances accounts, and current or other accounts.

The provisions of this Article also apply to insurance, reinsurance and brokerage companies.

5) All breaches of the provisions of this Article will give rise to the application of the penalties provided for by Article 498 of this Code.

### **Sub-section 2 - Securities income**

**Art.96.-** The receipts for payments made in accordance with the provisions of Article 91 of this Code may substitute the declaration. The persons concerned must, at the latest on 30 April of each year, file a summary declaration showing the payments made in respect of a year.

**Art.97.-** 1) The companies or enterprises referred to in paragraphs 1 and 2 of Article 69 above, which intend to carry out a total or partial redemption of the amount of their shares, partnership shares or equity interests before they are wound up or liquidated, must declare this to the relevant tax office for their headquarters.

This declaration must be made within one month of the date on which the operation was decided and must be accompanied by:

- a) a certified true copy of the decision that ordered the allotment;
- b) a table showing the number of shares, their par value, the capital paid and, as necessary, the redemptions that were carried out and capital reductions that were implemented.

2) The companies that wish to benefit from the exemptions provided for in Article 73 of this Code must attach a specific application to their declaration, accompanied by a

detailed estimated statement of all the items that make up the corporate assets on the date of the application, as well as all the liabilities.

The assets must be estimated on the basis of their actual value, notwithstanding any valuation in the financial statements.

3) The exemption application must be accompanied, as necessary, by the following documents:

- a) if mandatory depreciation provided for in the by-laws was recognised, by the original by-laws and, as applicable, the text of all amendments that were made thereto with the dates on which such amendments were made;
- b) if depreciation must be recognised by the realisation of one or more assets and by drawing an amount from accounts other than the income statement, the reserves and the various balance sheet provisions, by the statement certifying which assets were realised and the account to which the depreciation was charged;
- c) if the exemption application is based on the obligation to return to the awarding authority, at the end of the concession contract, all or part of the assets, by the detailed declaration and, if applicable, the detailed estimated declaration, firstly, of the corporate assets and, secondly, of the assets to be returned to the awarding authority at the end of the concession.

4) When the exemption application is based on the retirement, at the end of the concession contract, of all or part of the corporate assets, either on account of obsolescence, or on account of being returned to the awarding authority, the exemption will be granted insofar as the share capital cannot be rebuilt in light of the depreciation charges or reimbursements that were recognised free of tax, at the time it is submitted.

### Sub-section 3 - Income from receivables, deposits and guarantees

**Art.98.-** 1) In all cases where the payment of the tax is not their personal responsibility, the persons who pay interest, arrears and other income from receivables of types, deposits, guarantees and current accounts, are required to declare, during the first quarter of each calendar year, the names and addresses of the beneficiaries, as well as the amount of the sums paid during the previous year, where said sums exceed fifteen thousand (15,000) CFA francs per beneficiary annually.

This declaration must be filed in duplicate with the relevant tax office for their residence.

2) The persons who have not filed the declarations, will lose the right to include the undeclared amounts in their expenses when determining the tax base for the tax on business profits or corporate income tax.

These provisions will only be applied after a refusal to comply within eight (8) days of the final notice to file the declarations, which is sent to the taxpayer to declare the amounts in question or to correct the errors identified in the declaration.

**Art.99.-** A *notaire* who places a deed containing an obligation on record is required to read to the parties the provisions of Articles 71(1), 85 and 485 of this Code. The *notaire* must make reference to this reading in the deed.



**Art.100.-** All breaches of the provisions of this chapter will give rise to the application of the tax penalties provided for in Articles 485 et seq. of this Code.

## Chapter 4 - Tax on income from real estate

### Section 1 - Scope of application

**Art.101.-** 1) Natural persons and persons regarded as such who receive income from real estate, as defined by Article 102 below, are subject to the tax on income from real estate.

The State, municipalities, administrative, cultural or scientific public institutions, associations and non-governmental organisations will be regarded as natural persons when they only receive income from real estate.

2) Natural persons who are shareholders of companies that predominantly deal in real property and that are not liable to corporate income tax, are also subject to the tax on income from real estate.

Within the meaning of this paragraph, a company that predominantly deals in real property is one that derives more than 50% of its turnover from real estate income, as defined by Article 102 below.

**Art.102.-** 1) When they are not included in the business profits of an industrial or commercial company, a farming business or a non-commercial profession, the following are included in the income that is liable to the tax on income from real estate:

- a) income from developed property, such as houses and factories, as well as income from the machinery of industrial establishments that are fixed land structures or placed on specific foundations that are incorporated into the building, and the income from all commercial or industrial facilities that are regarded as buildings, including income from furnished rentals;
- b) income from undeveloped property of all types, including income from land occupied by quarries, mines, ponds, salt works and salt marshes, as well as the rent from building leases;
- c) ancillary revenues derived, in particular, from the leasing of the right to post bills, from the licensing of the right to operate quarries, and from royalties for subsurface resources or other similar royalties, the origin of which is the right of ownership or of usufruct.

2) The income in kind that corresponds to the provision of housing, the owner of which reserves the use thereof, is not liable to the tax on income from real estate.

### Section 2 - Basis of assessment

**Art.103.-** 1) The taxable income is comprised of the gross amount of the rent.

As applicable, this amount must be increased by the amount of the expenses the owner is normally required to pay and which, by agreement, is charged to the tenants, and reduced by the amount of the expenses incurred by the owner on behalf of the tenants.

2) When the owner does not occupy the housing personally but makes it available to a third party free of charge, without being required to do so by a legal obligation, the corresponding income in kind must be included in the basis of assessment.

This income must be assessed in accordance with the provisions of Article 157 of this Code.

### Section 3 - Rates

**Art.104.-** 1) The rate of the tax on income from real estate is set at 12%.

2) The tax that results from the application of the above rate will be increased by a fee of four thousand (4,000) CFA francs, paid to the Benin Office de Radiodiffusion et Télévision.

3) The tax on income from real estate and the fee referred to in paragraph 2 of this Article must be listed separately on the same collection order as the flat-rate property tax.

### Section 4 - Filing and payment

**Art.105.-** 1) All persons who are liable to the tax are required to file on 10 February of each year at the latest, with the relevant tax office, an annotated statement of the names of the tenants, the rent received during the previous year, and any amounts that were deducted from said rent.

2) For income that was not subject to a withholding, the tax will be paid on the basis of said statement.

Notwithstanding the above provisions, the authority may define the basis of assessment directly with regard to the lease agreements, and information obtained or collected during property audit operations. In the event of disputes, the petitions will be examined in accordance with the procedure stipulated in Articles 583 et seq. of this Code.

**Art.106.-** (L.F.2023) 1) A withholding tax of 12% on the gross amount of the rent payments must be applied by the tenants. This rate is reduced to 10% when the lessor is subject to tax on business profits or corporate income tax.

2) Individual tenants are exempt from the withholding, except for those who rent via the intermediary of an entity that is liable to income tax.

3) The withholding tax entails discharge but does not result in exemption from the annual filing obligation.

4) This withholding tax must be paid at the tenant's initiative at the latest on the tenth of the month for the amount levied on the rent for the previous month. When the rent is paid early, the withholding tax is payable at the latest on the tenth of the month following that in which the early rent payment was made.

5) The withholding taxes applied and paid over by the tenants on behalf of the owners will be deducted from the tax that is payable.

6) Concerning properties that are rented to the State, the Treasury is authorised to withhold income tax at the rate set in paragraph 1 above from the payment orders issued for the payment of the rent. The Directorate General of the Treasury and Public Accounts will send the General Tax Directorate, at the latest on the tenth of each month, a list of the names of the persons who were subject to withholding during the previous month.

7) Owners will remain jointly and severally liable for paying over the amounts withheld by tenants. They may also be the subject of the same actions and penalties in the event of failure of non-compliance.

8) The tax on income from real estate is paid in four (4) instalments, in the same way as the tax on business profits. The withholding taxes provided for above must be offset against the amount of the instalments.

**Art.107.-** 1) The companies referred to in Article 101(2) of this Code are required to file, before 31 January of each year, with the relevant tax office for the company's headquarters or, if this headquarters is located abroad, with the relevant tax office for the location of the real estate, a statement that contains the following information:

- a) the total income collected by the company in respect of the previous year, broken down into:
  - the amount of the rent payments collected;
  - the amount of the other income collected by the company;
- b) the amount of the withholding taxes applied to the rent payments collected in respect of the previous year;
- c) the first names, surnames and home addresses of the shareholders;
- d) the number of equity interests in the company owned by each shareholder.

2) For income that was not subject to a withholding, the tax will be paid by the company on the basis of said statement, on behalf of the shareholders.

3) The shareholders will still be required to file the declaration provided for in Article 105 of this Code; they will not, however, be liable for the tax on income from property for the portion of the company's profit, insofar as the tax will have been paid by the company.

4) Failure to provide the aforementioned information, or the inaccuracy of said information, carries the penalty provided for in Article 485 below.

5) The company will be liable for penalties in the event of failure to file declarations or to pay over the tax on time.

## Chapter 5 - Capital gains tax on real estate

### Section 1 - Scope of application

**Art.108.-** (L.F.2023) 1) The capital gains tax on real estate is based on the capital gains generated by natural or legal persons at the time of the disposal:

- a) of developed or undeveloped property;
- b) of rights in rem in immovable property;
- c) of security interests in companies that predominantly deal in real estate;

- d) of mineral interests. Mineral interests should be understood to mean all exploration or mining rights and other authorisations that confer an economic advantage, which are granted for mines or hydrocarbons.
- 2) Disposal should be understood to mean, in particular:
- a) sale;
  - b) exchange;
  - c) contribution to a company or partnership;
  - d) distribution of dividends by means of a transfer of real estate;
  - e) expropriation in the public interest;
  - f) gifts.

**Art.109.-** 1) Companies deemed to predominantly deal in real estate are those whose assets comprise, on the date of disposal of said securities or comprised, on closing date of the most recent fiscal year prior to said disposal, for more than 50% of the original value thereof, real estate or rights in rem in immovable property, as defined in Article 108 above, rights to a property finance lease or securities in other companies that predominantly deal in real estate.

2) For the application of these provisions, the real estate or rights mentioned above that the company allocates to its own industrial, commercial or agricultural operations or to the exercise of a non-commercial profession are not taken into account.

**Art.110.-** The following are exempted from the tax:

- 1° the proceeds of the disposal of real estate by the State, public administrative institutions, State-owned companies, companies with a public shareholding, the purpose of which is to improve housing, local authorities and public or private bodies, the acquisitions of which are exempted from registration duty;
- 2° the capital gains on disposal of the real estate recognised in the balance sheet assets of a company that is subject to the tax on business profits or to corporate income tax.

## Section 2 - Basis of assessment

**Art.111.-** 1) The taxable capital gain is equal to the difference between:

- a) on the one hand, the sum or counter-value in consideration for which the real estate, the right in rem in immovable property or mineral interest is divested, or the estimate on the basis of which it was merely contributed to a company or contributed to a company in return for valuable consideration;
- b) and, on the other hand, its purchase price or value, as defined in Article 112 below. If this acquisition takes place without payment of valuable consideration, the presumed purchase value will be the market value of the real estate or rights on the date of the transfer without valuable consideration.

2) For the assignment of rights to land held by means of a lease, the original value is comprised of the total rent payments that have fallen due on the assignment date.

3) For mineral interests received directly from the State, the acquisition value corresponds to the duties that were paid in order to obtain the interest, in accordance with the provisions of the laws and regulations in force and the agreements between the State and the holders of the interests.

4) The provisions of this Article are applicable to *inter vivos* transfers without valuable consideration. Where necessary, the capital gain is determined on the basis of market value of the property on the date of the transfer.

**Art.112.-** 1) The acquisition value is the sum or the counter-value paid by the transferor to obtain the title to the real estate or to the right in rem in immovable property. It is determined on the basis of the purchase price or of the estimate of the acquisition value of the real estate or of the right in rem in immovable property and of the properties it comprised at the time of the acquisition.

The purchase price or the estimate can be evidenced by instruments of any kind that provide an authenticated date.

2) In the absence of documents concerning the real estate itself or in the event of an increase in the purchase price, the capital gain will be determined on the basis of the reference acquisition value.

The reference acquisition value is the discounted value of the sum or counter-value that the transferor would have paid in order to obtain the title to the real estate. The reference acquisition values are defined and periodically adjusted by an order of the Finance Minister.

However, the amount paid out by an attaching creditor who, in the absence of bidders, wins the auction for a building mortgaged for their benefit, will be that stated on the final notice to pay that was served on their debtor prior to the attachment, in accordance with Article 1224 of the Code of Civil Procedure, provided that said amount is higher than the hammer price.

**Art.113.-** For real estate under construction, the transferor is required to make a detailed declaration of the disposal price, with a distinction between the value of the plot and that of the construction work. The capital gain on the construction work is set at 10% of its disposal price.

**Art.114.-** 1) The transfer instruments or declarations must include, in the section on the origin of title, information on both the date and acquisition method, as well as on the value of the real estate at the time of the acquisition thereof by the party or parties who are transferring it.

2) This information must also include the date on which the instruments, exhibits, judgments or documents concerning the real estate were registered and, to the extent possible, the details of the registration itself.

### Section 3 - Rates

**Art.115.-** 1) The rate of the tax is set at 5%.

2) The amount of the tax cannot under any circumstances be less than 1% of the disposal price.

3) A portion of the proceeds from the capital gains tax on real estate will be assigned to the budget of the local authority in the location of the divested real estate, in accordance with rules that will be specified by an order of the Finance Minister.

#### Section 4 - Filing and payment

**Art.116.-** 1) The tax must be declared and paid when the registration formalities are carried out for the disposal instruments or the transfer declarations.

2) Notwithstanding any agreements to the contrary, the transferor will be liable for payment thereof.

3) For the assignment of rights attached to mineral interests, the tax must be calculated and paid by the assignee on the amount paid to the assignor.

The assignee of mineral interests is liable to the capital gains tax on real estate that is payable by the assignor, if the assignor is not domiciled in the Republic of Benin or does not have a representative in that country. In this case, the amount of the tax must be calculated and paid by the assignee on the amount received.

**Art.117.-** No transfer of real estate is possible if the vendor has not first provided proof of the payment of any tax that is owed.

**Art.118.-** The public officials and judicial officers, and the civil servants who have the same level of responsibilities, will in all cases be held liable for the payment of tax, the chargeable nature of which is evidenced by the instruments they place on record or the documents they append or that they use.

### Chapter 6 - Tax on wages and salaries

#### Section 1 - Scope of application

**Art.119.-** The following are liable to the tax on wages and salaries

- 1° income derived from wages, emoluments, and public- or private-sector salaries, as well as incidental remuneration of all types;
- 2° post-employment benefits paid to employees by their employer or by an insurer to which the employer has paid contributions;
- 3° compensation paid to the officers of companies that are liable to corporate income tax, with the exception of those referred to in Article 69(4) of this Code.

**Art.120.-** The following are exempted from the tax:

- 1° dismissal indemnities that are calculated on the basis of the provisions of law, with the exception of paid vacation and notice period indemnities;
- 2° family allowances, attendance allowances and salary or indemnity increases that are classified as social security benefits. For private-sector employees, the portion of these allowances or increases that exceeds the amount payable by the National Social Security Office to civil servants of the same position, the same grade and the same marital situation, is not exempted from tax;

- 3° the employer's contributions paid by employers pursuant to a collective death and disability benefit contract and complementary pension contract, within the limit of one-and-a-half times the employer's share of the pension contribution paid to the National Social Security Office;
- 4° remunerations and bonuses of all types in respect of a duly signed internship agreement, for a period that cannot exceed three (3) months, that are paid to pupils, students or apprentices who are under the age of thirty (30).

The internship concerned must be an integral part of a school or university program and be mandatory in nature, i.e., be provided for by the school or university regulations or be necessary in order to take an exam or obtain a qualification. The monthly remuneration cannot under any circumstances exceed three (3) times the statutory minimum wage.

**Art.121.-** 1) Wages, emoluments, salaries and incidental remuneration are taxable in the Republic of Benin:

- a) where the beneficiary is domiciled in the Republic of Benin, even though the remunerated activity is carried on outside of national territory or the employer is domiciled or established outside of the Republic of Benin;
- b) where the beneficiary is domiciled outside of the Republic of Benin, provided that the remunerated activity is carried on in the Republic of Benin or that the employer is domiciled or established in the Republic of Benin.

2) The following are deemed to have their tax residence in the Republic of Benin:

- a) persons who own or have use of a permanent home in said country;
- b) persons who, without having a permanent home in the Republic of Benin under the conditions defined in section a) of this paragraph, nevertheless have their center of vital interests in the Republic of Benin;
- c) in the event that the persons have no permanent home in the Republic of Benin or if their center of vital interests cannot be determined, they will be deemed to have their residence in the Republic of Benin, if they reside in said country habitually for at least one hundred and eighty-three (183) continuous or non-continuous days over a period of twelve (12) months.

## Section 2 - Determination of the basis of assessment

**Art.122.-** 1) The taxable monthly salary includes the gross amount of the wages, emoluments, salaries, allowances, bonuses, overtime pay, business benefits in cash or in kind, and all types of indemnities, including travel allowances.

2) Sick pay received by employees is included in the basis of assessment.

**Art.123.-** (L.F.2024) 1) Benefits in kind are defined as a supplement to the salary paid, namely property that the employer owns or leases, which is made available to the employee free of charge, or services that would normally be provided at the employee's expense, but that the employer provides to the employee free of charge or at a reduced cost.

2) Benefits in kind are assessed each month for their actual value. They include, in particular:

- a) the cost of travel and of transportation of the personal effects of foreign employees and/or of their family, which are paid by the employer, with the exception of those

concerning their initial arrival in the Republic of Benin for taking up their position and at the time of their definitive departure due to them leaving their position;

- b) medical and pharmaceutical expenses that are paid by the employer, with the exception of those concerning repatriation for health reasons, as well as 80% of the employee's medical consultation and hospitalisation expenses, which are billed by healthcare establishments in Benin in respect of the period of sick leave defined by labour legislation;
- c) the school fees for the employee's children that are paid by the employer;
- d) expenses that would normally be paid by the employee that are covered by the employer;
- e) price reductions on products that are sold or purchased by the enterprise, where said reductions exceed 30% of the retail price, including all taxes.

3) However, the following benefits in kind must be assessed on a flat-rate basis each month:

Benefit	Executives and senior managers	Office workers
Housing	15% of the basic salary	
Private servants	15% of the basic salary, provided that social security contributions to the National Social Security Office were paid on the private servant's salary and that taxes were withheld from said salary	
Electricity	XOF 50,000	XOF 20,000
Water	XOF 10,000	XOF 5,000
Telephone	XOF 15,000	XOF 5,000
Subsistence	XOF 50,000	XOF 30,000
Four-wheeled vehicles	XOF 30,000	XOF 15,000
Two-wheeled vehicles	XOF 10,000	XOF 5,000

4) For domestic staff, benefits in kind are assessed on a flat-rate basis for each month by dividing the rates provided for in paragraph 3 above by two.

**Art.124.-** The following are not included in the basis of assessment:

- 1° the training costs for the personnel incurred by the enterprise, to the extent that the corresponding expenses are deductible under the conditions defined by Article 23 of this Code;
- 2° the health insurance premium for a group contract paid by the enterprise;
- 3° the health insurance premium for an individual contract paid by the company, where it does not exceed 80% of the premium stipulated by the contract. As the case may be, the excess part of 20% will be regarded as a benefit in kind that is included in the basis of assessment;
- 4° the wages, emoluments, salaries and incidental remuneration paid to professional athletes and to artists within the limit of four (4) times the statutory minimum wage.

### Section 3 - Rates

**Art.125.-** 1) The tax is calculated by applying the following progressive rates to the basis of assessment:

- 0% for the bracket of XOF 60,000 or less;



- 10% for the bracket of XOF 60,001 to XOF 150,000;
- 15% for the bracket of XOF 150,001 to XOF 250,000;
- 19% for the bracket of XOF 250,001 to XOF 500,000;
- 30% for the bracket in excess of XOF 500,000.

2) The tax that results from the application of the above scale will be increased by a fee paid to the Benin Office de Radiodiffusion et Télévision of:

- one thousand (1,000) CFA francs on the salary of the month of March;
- three thousand (3,000) CFA francs on the salary of the month of June.

Persons for whom the amount of the taxable income does not exceed the first bracket of the tax scale are exempt from the payment of three thousand (3,000) CFA francs.

**Art.126.-** 1) Exceptional remuneration is taxed at reduced rates.

2) Exceptional remuneration includes:

- a) post-employment benefits and voluntary redundancy bonuses;
- b) notice period and paid vacation indemnities in connection with the termination of an employment contract;
- c) "thirteenth month" bonuses and similar forms of remuneration.

3) For the computation of the tax on wages and salaries:

- a) a tax is calculated on the average salary of the last twelve (12) months prior to the payment of the exceptional remuneration, including the remuneration referred to in paragraph 2(c) of this Article;
- b) this average tax is multiplied by the ratio of the total remunerations received during the month (monthly remunerations and exceptional remunerations) to the average salary determined in section (a) of this paragraph. The exceptional remuneration referred to in paragraph 2(a) of this Article benefits from a deduction of 25%.

#### Section 4 - Filing and payment

**Art.127.-** 1) All natural or legal persons who pay taxable amounts in the Republic of Benin are required to withhold the tax on behalf of the Treasury.

2) They must, for each person who receives a taxable payment, state in their ledger, file or other document that records the payroll or, if not, in a specific register, the date, the nature and the amount of the withholdings applied, and the references of the tax payment receipts issued by the relevant tax collection office.

3) Pursuant to labour legislation, employers who are required to issue a supporting document to beneficiaries each time that a salary payment is made, must state on said document the withholdings applied in respect of the tax on wages and salaries.

**Art.128.-** 1) Tax must be withheld at source at the time of the payments of wages, emoluments, salaries and incidental remuneration, when the employer is domiciled or established in the Republic of Benin.

2) Taxpayers domiciled in the Republic of Benin, who received from individuals, administrations, companies, or associations that are domiciled or established outside of Benin,

wages, emoluments, salaries or payments of any kind, are required to file each month, at their initiative, a declaration of their wage income.

They must calculate and pay over the corresponding withholdings under the same conditions and within the same time-limits as those imposed on employers.

3) The withholdings are applied in discharge of tax liability.

**Art.129.-** 1) The withholdings pertaining to the salaries for a given month must be paid over at the latest on the tenth of the following month.

2) The amount that corresponds to the withholdings applied must be handed over to the relevant tax collection office, together with a monthly tax declaration in duplicate using the standard form provided by the administration.

[NB - Combined model return for the tax on wages and salaries, the employer's payment on salaries and social security contributions: see Inter-Ministry Order n°0256/MEF/MTFP/DC/SGM/044SGG20 of 31 January 2020 that defined the rules on the application of Article 12 of the Budget Management Act for 2020]

## Chapter 7 - Withholding taxes

### Section 1 - Profit-based tax prepayment

#### Sub-section 1 - Scope of application

**Art.130.-** A profit-based tax prepayment is required for:

- 1° imported goods, including those placed under a suspensive procedure, with the exception of goods that are in transit or being transhipped, according to their manifest;
- 2° commercial purchases, as national trade, from importers, producers and resellers, which are effected in return for valuable consideration for a commercial purpose or presumed commercial purpose by a person who is subject to the tax on business profits or to corporate income tax;
- 3° all payments made to the suppliers of works and goods and to service providers by government agencies, local authorities, state-owned enterprises, non-governmental organisations, persons liable to corporate income tax or to the tax on business profits, national and international non-profit associations and organisations, aid agencies, and diplomatic missions.

**Art.131.-** The following are exempted from the profit-based tax prepayment:

- 1° sales by companies that distribute non-packaged water;
- 2° sales of electricity;
- 3° insurance premiums;
- 4° new companies that can prove they fall within the scope of application of the composite business tax, in respect of their first twelve (12) months of business activity;
- 5° natural or legal persons who can provide proof of exemption from income tax or the composite business tax;

- 6° sales of petroleum products to the non-importer distributors or retailers of petroleum products that procure their supplies from licensed import companies, and that apply approved prices;
- 7° rent for unfurnished or furnished buildings regardless of the purpose thereof, which is subject to the withholding tax provided for in Article 106 of this Code.

### Sub-section 2 - Calculation and allocation of the prepayment

**Art.132.-** 1) The prepayment is levied:

- a) for imports, on the customs value, increased by all the payable duties and taxes, with the exception of value added tax;
- b) for national trade, on the price including all taxes, with the exception of value added tax.

2) The rate of the prepayment is set at:

- a) 1% for:
  - imports of goods;
  - commercial purchases and supplies of works by enterprises registered under the unique tax identification number;
  - supplies of works, goods and services to the State, local authorities, wholly and partly state-owned enterprises;
- b) 3% for supplies of services by persons registered under the unique tax identification number;
- c) 5% for commercial purchases, supplies of works and of goods and services to the State, local authorities, and state-owned enterprises, and services provided by natural or legal persons who are not registered under the unique tax identification number.
- d) 5% for the persons defined in Articles 135 and 256 of this Code when standard invoices are issued. The conditions governing the implementation of this provision will be defined by a memorandum from the Director General of Taxes.

**Art.133.-** (L.F.2024) 1) Persons who are subject to the profit-based tax prepayment and who fall within the scope of the tax on business profits or corporate income tax are authorised to offset against the amount of the profit-based tax prepayment that is due on their transactions:

- a) the profit-based tax prepayment paid at the time of purchases of tangible assets;
- b) the profit-based tax prepayment levied on payments of services supplied;
- c) the profit-based tax prepayment paid on imports.

2) The amount of the profit-based tax prepayment, offsetting of which is requested, must be stated on a declaration and accompanied by the payment receipt.

3) If the amount of the profit-based tax prepayments paid and offset is higher than the amount of the profit-based tax prepayment that is due in respect of a given monthly declaration, the excess must be offset against the profit-based tax prepayment that is due in respect of a subsequent declaration or declarations, up until 31 December of the same year.

4) Any advance payments of tax on profits that have not been deducted in full by 31 December are set off against tax on profits, subsequent advance payments and any arrears of tax on profits.

5) For taxpayers who fall within the scope of the composite business tax, the profit-based tax prepayments paid are deductible from the portion of the composite business tax that is assigned to the national budget, which is payable in respect of the fiscal year in which it is collected.

### Sub-section 3 - Obligations

**Art.134.-** 1) The profit-based tax prepayment is levied on behalf of the General Tax Directorate.

2) It is withheld by the General Customs Directorate, and also by the clerks or officers of public authorities, by state-owned enterprises that benefit from supplies of works, goods or services, by non-governmental organisations, national and international non-profit associations and organisations, aid agencies, and diplomatic missions, by persons who are subject to corporate income tax or the tax on business profits who benefit from supplies of works or services and, moreover, by importers, producers and resellers who sell on a wholesale or semi-wholesale basis, and who are not subject to the composite business tax.

3) The profit-based tax prepayment that is billed or withheld must be declared and paid to the tax collection officer at the latest on the tenth of the month following that during which it was billed or withheld.

The declaration is mandatory for enterprises, even if there is no withholding or deduction in respect of a given month, failing which the penalties provided for in Article 485 of this Code will apply.

4) The declaration of the profit-based tax instalment that is billed or withheld must state the name, exact address and the unique tax identification number of the taxable person, as well as the amount of the profit-based tax instalment and that of the sum, including all taxes, that triggered the withholding.

### Section 2 - Levy on commercial transactions by persons not listed in the General Tax Directorate's file of taxpayers

**Art.135.-** Independently of the profit-based tax prepayment, a levy must be paid on imports, exports, sales and services effected by natural or legal persons who are not listed in the General Tax Directorate's file of taxpayers.

The General Tax Directorate's file of taxpayers is made up of all the taxpayers who fall under the authority of its operating structures and who duly fulfil their filing and payment obligations.

**Art.136.-** The levy is due on:

- 1° goods that are imported or exported by enterprises that are not listed in the General Tax Directorate's file;
- 2° goods that are imported and released onto the consumer market in the Republic of Benin, for which the bill of lading was amended concerning the nature of the document, leading to a change of consignee, with the exception of new and second-hand vehicles;

- 3° all payments made to the suppliers of goods and to the service providers referred to in sub-paragraph 1 of the preceding article by treasury accountants, government agencies, and wholly and partly state-owned enterprises.

**Art.137.-** The levy is equal to:

1) 10% of the customs value increased by all the payable duties and taxes, with the exception of value added tax, for imports or exports of goods effected by enterprises that are not listed in the General Tax Directorate's file.

2) Concerning goods that are imported and released onto the consumer market in the Republic of Benin, for which the bill of lading was amended concerning the nature of the document, leading to a change of consignee, the rate is also 10%. This tax is owed by the importer and must be paid by the purchaser at the time of the customs formalities; however, the importer and their client are jointly and severally liable for the payment of said tax.

3) 10% of the price including all taxes, with the exception of value added tax, for payments made to suppliers of goods and service providers that are not listed in the General Tax Directorate's file, by treasury accountants, government agencies, and wholly and partly state-owned enterprises.

**Art.138.-** The levy cannot be offset against the taxes that are payable by the taxable persons referred to in Article 135 of this Code. The levy owed is definitive and does not release them from the tax obligations that result from the tax treatment that is applicable to them.

**Art.139.-** 1) The levy will be collected on behalf of the General Tax Directorate by the General Customs Directorate, on the one hand, and by treasury accountants, public bodies, and wholly and partly state-owned enterprises, on the other hand.

2) The levy collected by treasury accountants, public bodies, and wholly and partly state-owned enterprises must be declared and paid over to the relevant office of the tax collection officer at the latest on the tenth of the following month.

3) The declaration must state the name, exact address and unique tax identification number of the taxable person, as well as the amount of the tax and the basis of assessment.

**Art.140.-** The penalties provided for by Article 492 of this Code apply to tax on transactions by natural and legal persons who are not listed in the General Tax Directorate's file.

### Section 3 - Withholding tax on remunerations owed to non-resident service providers

**Art.141.-** (L.F.2024) 1) A withholding tax is applied to monies owed to natural or legal persons who are not residents of the Republic of Benin and who do not have a permanent establishment in said country, as remuneration for services of all types that are provided or used in the Republic of Benin.

2) This withholding tax concerns, in particular:

- a) amounts payable as remuneration for an activity carried on in the Republic of Benin in the pursuit of a non-commercial profession;
- b) income from royalties received by writers or composers or by their heirs or legatees;

- c) income received by inventors in respect of the granting of exploitation licences for their patents, or the assignment or licensing of trademarks, or manufacturing processes or formulae;
- d) amounts owed as remuneration for services of all types that are supplied or used in the Republic of Benin;
- e) amounts owed as consideration for construction works, within the meaning of Article 224 of this Code.

3) Remuneration paid for artistic and cultural services is exempt from this deduction.

**Art.142.-** (L.F.2023) 1) The withholding rate is set at 20%.

2) The withholding tax applies to the amount of the monies owed to persons who are not residents of or established in the Republic of Benin, including the incidental amounts and expenses incurred by the debtor on behalf of the service provider.

3) The withholding tax provided for in paragraph 1 of this Article does not apply when an exemption is provided for by a double taxation and mutual assistance convention with a view to combatting tax evasion and tax avoidance.

Concerning royalties, where they are owed to a natural or legal person who is a resident of a country with which the Republic of Benin has signed a double taxation convention, and where the taxation is attributed to the Republic of Benin, the applicable rate is that provided for by the convention, if it is not higher than the rate set by this article.

For the application of this paragraph, the person who receives the remunerations must provide proof to the debtor or the person who pays said revenues of their tax residence in their State of residence, that they are the beneficial owner thereof and that they are liable to corporate income tax or an equivalent tax in their State of residence, without being exempted therefrom.

The debtor must provide the administration, within one month of recognising the expense, with the names, corporate names and addresses of the beneficiaries, the amounts that are owed to them, and the certificate proving their tax residence in the other contracting State.

4) When, in a given contract, supplies of services are accompanied by a sale of goods, the amount of said sale is not liable to withholding tax if it is invoiced separately. If this is not the case, the withholding tax will be applied to the total amount of the contract.

**Art.143.-** 1) The withholding tax must be applied by the debtor and paid over to the tax collection office at the latest on the tenth of the month following that during which the expense was recognised.

2) The debtor or any person who is responsible for invoicing the service or collecting the amounts owed and the non-resident service provider are jointly and severally liable for the payment of the withheld tax.

3) The penalties provided for by Articles 485 and 492 of this Code apply to taxpayers who file the withholding declaration after the deadline or who do not pay on time.

## Section 4 - Levy in discharge on sales of hydrocarbons effected in the Republic of Benin by non-resident persons

**Art.144.-** 1) A levy in discharge equal to 0.30 CFA francs per litre sold is payable by enterprises that do not have their tax residence in the Republic of Benin but that sell hydrocarbons from their tanks located in the Republic of Benin directly to licensed local or foreign importers.

2) The withholding must be applied by the custodians of the stocks of hydrocarbons and paid over to the tax collection office at the latest on the tenth of the month following that during which the withholding was applied.

3) The party liable for the levy and the non-resident importer are jointly and severally liable for the payment of the withheld tax.

4) The penalties provided for by Article 485 of this Code apply to custodians who file the withholding declaration after the deadline or who do not pay on time.

## Chapter 8 - Tax incentives

### Section 1 - Investment incentives

#### Sub-section 1 - Investments in priority projects

**Art.145.-** Notwithstanding the provisions of Article 1 of this Code, investment projects in priority sectors may benefit from special tax treatment, the conditions of which will be defined by decrees issued following consultation of the Council of Ministers.

#### Sub-section 2 - Incentive for creating new enterprises

**Art.146.-** (L.F.2023)1) The corporate income tax or tax on business profits payable by new, duly incorporated companies is reduced by:

- 25% for the first fiscal year;
- 25% for the second fiscal year;
- 50% for the third fiscal year.

2) The tax reductions do not apply:

- a) in the event that additional tax is assessed following a tax audit procedure;
- b) to enterprises established for a total or partial takeover of existing business activities;
- c) for companies with a turnover of one billion (1,000,000,000) CFA francs or more;
- d) for branches of non-resident companies in Benin.

#### Sub-section 3 - Incentive to create start-ups

**Art.147.-** 1) Innovative enterprises in the field of information technologies and communication or "start-ups" that are incorporated in the form of companies benefit from exemption from corporate income tax and from the employer's tax on salaries for the first two

(2) years of business activity and from a reduction of 50% of said taxes in respect of the third year.

2) Start-ups are eligible for this treatment if their annual turnover does not exceed one hundred million (100,000,000) CFA francs excluding tax and if they obtained the "start-up" label.

The conditions for obtaining the start-up label will be defined in a decree adopted following consultation of the Council of Ministers.

### **Section 2 - Incentive in connection with business formalities - Approved small business management centres**

**Art.148.-** 1) All natural or legal persons, whether traders or non-traders, acting in the capacity of manufacturer, artisan or farmer and who are not listed in the General Tax Directorate's taxpayer file, and whose turnover is less than or equal to fifty million (50,000,000) CFA francs, will benefit from of 40% reduction of corporate income tax, the tax on business profits or the composite business tax if they join an approved small business management centre.

2) The benefit applies from the first to the fourth year as from the date of joining the approved small business management centre.

3) The members of approved small business management centres are exempted from tax audits during the two (2) fiscal years that follow the year in which they joined the centre, except in cases of confirmed tax evasion, failure to issue standard invoices, or underreporting of purchases or sales. This exemption does not preclude an audit of the aforementioned fiscal years at a later date, within the limit of the administration's right of adjustment.

4) The aforementioned tax reductions will be cancelled, and the tax duly adjusted, if, during the two (2) fiscal years following the year during which the member joined an approved small business management centre, said member voluntarily cancels their membership.

5) The tax benefits provided for above cannot, for a given taxpayer, be combined with other advantageous or special forms of tax treatment.

### **Sub-section 3 - Incentives to create employee positions**

**Art.149.-** 1) Taxable persons for the purposes of corporate income tax or the tax on business profits and who can prove completion of one year of business activity, can benefit from an annual, non-renewable tax credit, following the signature of an indefinite-term recruitment contract with persons of Beninese nationality who are starting their first job.

2) Taxpayers who benefit from preferential tax treatment provided for by the Investment Code, the law that defines the tax treatment for the free-trade zone, the Mining Code, the Oil Code, or any other legislation that provides for current or future special tax treatment, cannot benefit from this measure.



3) The amount of the tax credit is defined as follows:

- XOF 100,000 for 1 to 5 jobs created;
- XOF 200,000 for 6 to 10 jobs created;
- XOF 350,000 for 11 to 20 jobs created;
- XOF 500,000 for more than 20 jobs created.

The number of jobs created is assessed on 31 December of each year.

The credit is only granted when the employee has completed at least one (1) year of service.

4) The credit will be granted in response to an application submitted during the first quarter of the year following that of the recruitment, accompanied by a certificate authenticated by the National Social Security Office and the Department of Labour. A tax credit certificate will be issued to the enterprise in accordance with the procedure for special tax treatment.

#### Section 4 - Accredited or approved companies

**Art.150.-** 1) Enterprises that are approved for tax treatment that is specific to a sector, in particular in the field of investment, mining or oil, as well as those that hold approvals granted by the State, will be exempted from taxes, duties and charges within the limit of the terms of their approval or of their contractual requirements.

If the tax administration or any other inspection body identifies a breach by these enterprises of the obligations that result from their approval or their contractual requirements, this will trigger the loss of the benefit of the favourable tax treatment and the application of ordinary-law treatment.

2) No public authority may exempt, through specific provisions, a holder of accreditation or a beneficiary of special treatment from the obligation to undergo tax audits, in compliance with the regulations, or to undergo the inspections carried out by empowered national technical bodies for this purpose.

Where necessary, clauses that prohibit audits or inspections of holders of accreditations or beneficiaries of special treatment, will be deemed to be null and void.

## Part 2 - Taxes on net worth

### Chapter 1 - Single property tax

**Art.151.-** The single property tax is an annual charge on land holdings located in the Republic of Benin.

## Section 1 - Scope of application

### Sub-section 1 - Taxable properties

**Art.152.-** Developed and undeveloped land holdings are subject to the charge.

1) Developed property is defined as fixed land structures, such as houses, workshops, factories, plants and, in general, all erected buildings made out of masonry, iron, wood or other materials.

Uncultivated land that is used for commercial or industrial purposes, such as construction sites, locations for the storage of goods and other facilities of the same type, is regarded as developed property.

2) Undeveloped bare land of all types located in the Republic of Benin, with the exception of tracts thereof that are specifically exempted, constitutes undeveloped property and is taxed as such.

Lightweight structures, in particular kiosks, outbuildings, lodges, booths, straw huts, mud houses, and housing that is merely placed on the ground with no masonry foundations are regarded as undeveloped property. However, if these constructions are used to produce income or for commercial purposes, they will be taxable under the rules that apply to developed property.

### Sub-section 2 - Exemptions

**Art.153.-** The following are exempted from the single property tax:

- 1° the buildings, real estate or constructions that belong to the State, to the Departments, the Municipalities and public institutions, regardless of whether or not they are allocated for public use, but that do not generate income. This exemption includes buildings that belong to diplomatic missions and international organisations that have signed a host agreement with the Republic of Benin;
- 2° for agriculture:
  - a) the nurseries and test gardens planted by the administration or by collective interest farming cooperatives with the aim of selecting and improving planting stock;
  - b) land that is not intended for construction that belongs to agricultural cooperatives;
  - c) cultivated land or land that is effectively used on 1 January of the taxation year for growing vegetables, flowers or fruit, or for the production of planting stock and seedlings, where said land is located outside of a perimeter defined by a municipal order for each municipality or local community;
  - d) buildings that are used for farming businesses in order to house animals or store crops;
  - e) croplands of five (5) hectares or less in a single tract, where the owner does not possess any other cropland;
- 3° land or premises for school, university or sport use that belongs to school or university establishments, or to sports companies that are recognised by the State;
- 4° buildings for school and university use, where the establishment is the owner of said buildings;
- 5° buildings that are intended for medical assistance or social work activities;
- 6° structures and facilities for worship, where they belong to the religious community.

**Art.154.-** (L.F.2024) 1) New constructions, reconstruction work and extensions to constructions that are exclusively intended to house the owner and their family are only liable to the single property tax as from the fourth year following the completion or the first use thereof.

If said buildings or sections of buildings are subsequently assigned to a use other than solely that of housing the owner and their family, they will no longer be entitled to the exemption for the remainder of the period as from the year of their conversion.

2) To benefit from the temporary exemption, the owner must send a letter to the tax department, together with a copy of the building permit, in the year in which the work is completed or the new buildings, additions to buildings or rebuilds are first used, and no later than 1<sup>st</sup> January of the year following the year of completion or use. The land title deed must certify that the property is owned.

Under no circumstances may temporary exemption be granted if the owner is not up to date with payment of the single property tax due on the pre-existing building.

If a declaration is not made within the time-limit, the constructions, extensions to constructions and reconstruction work are definitively taxed as of 1<sup>st</sup> January of the year in which they are discovered.

3) The exemption only applies to the main residence and can only be granted once to the same person.

**Art.155.-** Land that is seeded, planted or replanted with wood of all species will be exempted for thirty (30) years as from the first year of the seedlings, planting or replanting.

### **Sub-section 3 - Taxable persons and persons who are liable for the payment of tax**

**Art.156.-** 1) The single property tax is payable for the entire year by the person who is the owner on 1 January of the taxation year.

2) However, the tax is payable:

- a) in the event of usufruct, by the usufructuary;
- b) in the event of a long-term lease that confers a right in rem, by the lessee or leaseholder;
- c) in the event of a construction lease:
  - by the owner, until the year of completion of the construction,
  - by the lessee, as from the year which follows that of the completion. In these cases, the name of the owner must be shown on the collection order after that of the person liable for payment.

3) If the owner cannot be located, the proprietor, agent, lessee, legatee or any other right holder is required to pay said tax for and on behalf of the owner.

## **Section 2 - Basis of assessment**

**Art.157.-** Developed property is taxed on the basis of its rental value, in accordance with the rules defined by an order of the Finance Minister.

**Art.158.-** 1) Land and undeveloped property is taxed on the basis of the administrative valuation thereof on 1 January of the taxation year.

2) Administrative valuations are determined by municipal councils on the basis of market values, and may be adjusted every five (5) years.

### Section 3 - Tax rates

**Art.159.-** (L.F.2023, L.F.2024) 1) The rates of the single property tax are set each year by the municipal or local councils and cannot exceed the following limits:

- 3 to 7% for undeveloped property;
- 4 to 8% for developed property.

2) The local authorities must inform the General Tax Directorate at the latest on 30 November of each year of the decisions concerning the tax rates that are applicable as of 1<sup>st</sup> January of the following year in their territorial jurisdiction. If not, the taxes will be assessed using the rates for the previous year.

For local authorities that have not adopted any rates on the date of entry into force of this Code, the tax rates for the single property tax are set as follows:

- 5% for undeveloped property;
- 6% for developed property.

**Art.160.-** 1) The proceeds of the single property tax will be assigned to the budget of the municipality on the territory of which the tax is assessed, minus a 10% deduction that represents the administrative cost of the tax.

An order of the Finance Minister will specify the rules on the application of these provisions.

2) The representative of the beneficiary authority may ask the administration to disclose the taxable bases and propose that any errors be corrected.

### Section 4 - Filing and payment

**Art.161.-** 1) Taxpayers are required to declare their land holdings, via standard letter, to the tax office, within a time-limit of thirty (30) days of the acquisition or completion of the construction of said holdings.

2) They are required to display a data plate on their undeveloped property or information at the entry to their constructions, showing the complete address and obligatorily stating the "plot access road" number.

3) The owners and primary lessees and, in their stead, the building managers, are required to provide in writing to the revenue agents tasked with reviewing the tax base, at the latest on 10 December of each year, a declaration that states, on the date on which it was drawn up:

- a) the surname and first names of each lessee, the description of the premises leased to them, the amount of the main rent and, where applicable, the amount of the charges;

- b) the surname and the first names of each person who occupies the premises free of charge and a description of the premises occupied;
- c) a description of the premises that the declarer themselves occupies;
- d) a description of the vacant premises.

Failure to provide the aforementioned information, or the inaccuracy of said information, carries the penalty provided for in Article 485 below.

**Art.162.-** Prepayments are required for the single property tax, under the following conditions:

- 50% of the total amount of the tax payable for the previous year, by 10 February at the latest;
- the balance of 50%, by 30 April at the latest.

**Art.163.-** All tenants or lessees are required to pay, on behalf of the owners, the single property tax for the properties they have leased for farming or housing, and the owners are obliged to take into account the payment receipts for said tax, which is to be offset against the amount of the land rental costs or rent.

**Art.164.-** 1) Transfers of ownership are registered at the initiative of the parties concerned.

They may nevertheless be applied automatically in the notices to pay issued by the revenue agents tasked with assessment, on the basis of reliable documents said agents were able to access.

2) Until the transfer has been registered, the former owner will continue to be taxed, and said owner, their assigns or natural heirs may be compelled to pay the single property tax, unless action is taken against the new owner.

**Art.165.-** 1) The punctual payment of the tax creates a presumption of ownership.

Conversely, the non-payment of the tax may also be regarded as a presumption of non-ownership by the relevant authorities.

2) All instruments that transfer the ownership or use of taxable property, all authorisations to subdivide, build or reside, all allocations of land titles and, in general, all instruments that confer a right of ownership or use of a taxable property will only take effect to the extent that they bear an authentic tax authority stamp confirming that "the owner of the property is up-to-date with their single property tax obligations".

## Chapter 2 - Tax on motor vehicles

**Art.166.-** Motor vehicles with three wheels or more, which are registered in the Republic of Benin and used for the public or private transport of persons or goods, are subject to an annual tax known as the tax on motor vehicles.

**Art.167.-** (L.F.2024) The following are exempted from the tax on motor vehicles:

- 1° vehicles that are registered in the name of the diplomatic corps, consular corps, international organisations that are part of the United Nations system, inter-State organisations and international foundations;

- 2° vehicles that are registered in the name of international organisations and non-governmental organisations that have signed a headquarters agreement with the Republic of Benin.

**Art.168.-** The tax on motor vehicles is thus defined as follows:

1) For private transportation vehicles for persons or goods with a power rating for tax purposes:

- of 7 CV or less: XOF 20,000;
- of 8 to 10 CV: XOF 30,000;
- of 11 to 15 CV: XOF 40,000;
- above 15 CV: XOF 60,000.

2) For public transportation of persons and goods:

- vehicles for the public transportation of persons:
  - capacity of 0 to 9 persons: XOF 38,000;
  - capacity of 10 to 20 persons: XOF 57,000;
  - capacity of more than 20 persons: XOF 86,800;
- vehicles for the public transportation of goods:
  - 0 to 2.5 tonnes: XOF 49,500;
  - 2.6 to 5 tonnes: XOF 57,000;
  - 5.01 to 10 tonnes: XOF 86,800;
  - more than 10 tonnes: XOF 136,400.

For coupled vehicles, the tax must be paid for the articulated unit (tractor and trailers), taking into account the total of the payloads stated on the registration papers for each component.

3) For three-wheeled motor vehicles: XOF 15,000.

4) For vehicles that are registered in the category of private transportation of persons that are owned or used by companies or by any State-owned or private enterprise:

- XOF 150,000 for vehicles, the power rating of which for tax purposes does not exceed 7 CV;
- XOF 200,000 for the other vehicles.

The tax is payable even if the vehicles are assigned exclusively to the fulfilment of the corporate purpose.

**Art.169.-** 1) The tax is payable by the owner of the vehicle whose name appears on the registration papers.

2) The tax is payable for the entire year, in respect of vehicles that are owned or used on 1 January of the taxation year.

However, for persons who bring taxable vehicles into service for the first time during the year, the pro-rated tax is due within the first ten (10) days of the month following the month of registration. When the vehicle is brought into service in December, the tax is due at the latest on 31 December of the same year. All partial quarters are payable as full quarters.

3) The tax must be paid at the latest on 30 April of each year, upon presentation of the registration papers for the taxable vehicle.

Owners of non-roadworthy vehicles are exempt from the payment of the tax for such vehicles, if they provide proof that they have carried out, before 1 January of said year, the administrative formalities to obtain the retirement of said vehicle.

4) Payment of the taxes will be evidenced by the issuance of a receipt.

5) The penalties for failure to pay or late payment and all other infringements are provided for in Articles 485 and 506 of this Code.

**Art.170.-** 1) The payment of the tax on vehicles for the public transportation of persons and goods is definitive in nature for carriers that are liable to the composite business tax.

2) For carriers that are liable to the tax on business profits or corporate income tax, the tax on vehicles constitutes a tax prepayment.

3) For vehicle rental companies, the tax paid constitutes a corporate income tax prepayment where the customer is exempt therefrom.

**Art.171.-** 1) The relevant authorities that are responsible for the technical inspection must obligatorily request proof of payment of the tax prior to the inspection.

2) A joint order of the Ministers for Finance and Transport will specify the rules on the application of paragraph 1 of this Article.

### Chapter 3 - Tax on firearms

**Art.172.-** The tax on firearms, which comprises a fixed duty and an annual tax, is levied on behalf of the municipalities.

**Art.173.-** The following are exempt from the payment of the tax:

- 1° firearms that are used by the military, police or any other defence or security force;
- 2° regulation firearms that are issued to active and reserve officers and non-commissioned officers;
- 3° ceremonial firearms;
- 4° firearms that are kept in commercial stores and warehouses, for as long as they have not entered service.

#### Section 1 - Fixed duty

**Art.174.-** 1) The issuance, under the conditions laid down by the regulations in force, of authorisations to own sophisticated and unsophisticated firearms, first requires the payment of a fixed duty, in accordance with the following distinctions:

- a) rifled sophisticated firearms: XOF 15,000;
- b) non-rifled sophisticated firearms other than those below: XOF 6,000;
- c) small game firearms or firearms for sporting and/or decorative uses with a calibre of 6 mm or less: XOF 6,000;
- d) revolvers and pistols: XOF 20,000;
- e) long-barrelled hunting rifles: XOF 2,000.

2) The issuance of a duplicate requires the payment of identical duties to those listed above.

3) The duty on the issuance of ownership permits, which is regarded as contingent revenue, is levied on the basis of a collection order. In practice, the tax office representative immediately levies the duty and an adjustment collection order is then issued each month, by the revenue officer, for payments made in this way.

## Section 2 - Annual tax

**Art.175.-** 1) All firearm owners are required to pay an annual tax that is calculated on the following bases:

- a) rifled sophisticated firearms: XOF 30,000;
- b) non-rifled sophisticated firearms other than those below: XOF 20,000;
- c) small game firearms or firearms for sporting and/or decorative uses with a calibre of 6 mm or less: XOF 8,000;
- d) revolvers and pistols: XOF 30,000;
- e) long-barrelled hunting rifles: XOF 8,000.

2) The annual tax is merged, as far as long-barrelled hunting rifles are concerned, with the duty on hunting permits, which corresponds to the ordinary sport shooting permit, as said permit is not required of the duly authorised owners of a long-barrelled hunting rifle.

3) Deactivated weapons will no longer be taxed, provided that they are handed over to the administrative authorities that are empowered to receive them.

4) The tax on firearms must be declared and paid at the latest on 10 February of each year.

## Chapter 4 - Tax on motorised dugout canoes and motorised small boats

**Art.176.-** 1) All municipalities may, by a decision of their council, introduce a tax on dugout canoes and small boats.

2) This tax is levied on all owners of dugout canoes and small boats used at sea, on lakes or on rivers, either for fishing or for transportation, with the exception of non-motorised dugout canoes and small boats.

3) The amount of this tax is set at three hundred (300) to five hundred (500) CFA francs per day of operation.

4) The tax is due annually and must obligatorily be paid before 1 April of each year.

After this date, the persons liable will be required to pay a penalty of an equal amount.

5) In the event of the acquisition of a new craft after 31 March of each year, the tax must be paid on the same date as the acquisition. In this case, the double duty is payable as from the day after the date of the acquisition.



6) The payment of the tax will be evidenced by the issuance of a plate of a varying size, according to the category of the dugout canoe or small boat, which must be displayed clearly on the outside of the craft.

### Chapter 5 - Tax on two- to four-wheeled city taxis

**Art.177.-** 1) All municipalities may, by a council decision, establish a tax on two- to four-wheeled city taxis.

2) The rate of this tax is set at between XOF 0 and 5,000 per tax and per month.

3) The tax owed by the owner of the taxi in respect of a given month is levied by the tax collection officer at the latest on the tenth of the following month. All partial months are treated as complete months.

## Part 3 - Other direct taxes and similar duties

### Chapter 1 - Composite business tax

#### Section 1 - Scope of application

**Art.178.-** Taxpayers who are liable to the tax on business profits but whose turnover is less than or equal to a threshold defined by order of the Finance Minister, are, regardless of the nature of their activity, subject to a single levy known as the composite business tax, which is paid in discharge of the following taxes and duties:

- 1° the tax on business profits;
- 2° the business-use tax;
- 3° the beverage tax;
- 4° the employer's tax on salaries.

**Art.179.-** Taxpayers who are liable, as of right or by election, to corporate income tax pursuant to Article 3 above, do not fall within the scope of application of the composite business tax, regardless of their turnover.

**Art.180.-** The following are exempted from the composite business tax:

- 1° painters, sculptors, engravers, designers and other persons who are regarded as artists and who only sell the products of their art;
- 2° farming, fishing and livestock enterprises and companies;
- 3° duly registered start-ups, in respect of their first twelve (12) months of business activity. In respect of the year in which the exemption period expires, the tax is payable as from the first day of the month following that during which the exemption end-date fell.

**Art.181.-** 1) Enterprises that are subject to the composite business tax may elect to be subject to the tax on business profits, for which they can make an express request to the relevant tax office at any time.

- 2) This office is required to notify the approval or refusal to the taxpayer within eight (8) days of the request. The lack of a response is deemed to be an acceptance.
- 3) The election will take effect as from the first day of the month following that of the acceptance of the request.
- 4) The election is irrevocable.

**Art.182.-** 1) If the threshold provided for in Article 178 of this Code is exceeded, the taxpayer is required to comply with the provisions concerning the rules on the tax on business profits at the latest on the first day of the month after the exceedance is recognised. However, where the exceedance of the threshold occurs during the month of December, the change to the higher level of tax treatment will only take place in respect of the following year.

- 2) The provisions of the above sub-paragraph also apply when the amount of the purchases of goods, services and equipment, and that of the contracts signed, exceeds the threshold defined in Article 178 of this Code.
- 3) The composite business tax paid before the change of tax treatment is deemed to be a prepayment that can be offset against the new taxes, on the basis of 50% for local taxes and 50% for government taxes.
- 4) In the event of exceedance of the tax threshold for the composite business tax following an audit, the taxpayer will be reclassified as being subject to the tax on business profits.
- 5) Taxpayers who are subject to the tax on business profits and whose turnover falls below the limit provided for in Article 178 of this Code, will only be subject to the composite business tax when the turnover has remained below this limit for two (2) consecutive fiscal years.

## Section 2 - Calculation of the tax

- Art.183.-** (L.F.2024) 1) The composite business tax is determined by the application of a rate of 5% to the amount of the annual revenue.
- 2) The amount of the tax cannot be less than ten thousand (10,000) CFA francs.
  - 3) In addition to the amount of the tax, a fee of for thousand (4,000) CFA francs is levied for the benefit of the Benin Office de Radiodiffusion et Télévision.
  - 4) The tax is payable for each municipality and each establishment.

## Section 3 - Filing and payment

**Art.184.-** 1) Enterprises that are subject to the composite business tax must file a return for the previous fiscal year, with the relevant tax office for their location, at the latest on 30 April of each year.

2) This return, which must be filed in three (3) original counterparts, accompanied by the financial statements, must include:

- a) the surnames, first names or corporate name;
- b) the unique tax identification number;
- c) the nature of the activity/ies;
- d) the references of the location (city, district, island, plot, road, access and door number);
- e) the post box number;
- f) the telephone number and, as applicable, the email address;
- g) the list of the five (5) main suppliers and five (5) main clients of the enterprise;
- h) the amount of the purchases for the fiscal year, broken down by the type of goods purchased;
- i) the amount of the annual revenue and of the turnover, for each establishment;
- j) the annual amount of the rent paid for business premises.

**Art.185.-** 1) The composite business tax must be paid in two (2) provisional instalments calculated on the basis of the tax for the previous year. The payments must be made voluntarily within the first ten (10) days of the months of February and June of each year.

Enterprises that become liable to the tax for the first time pursuant to Article 180(3) above, must pay the minimum tax provided for in Article 183(2) above by the tenth (10<sup>th</sup>) day of the month that follows that during which the exemption period expired.

2) The balance if any, must be paid at the latest by 30 April when the declaration is filed.

3) The prepayments and any withholdings of profit-based tax will be offset against the reported income. When the return shows a credit balance, this will be offset against the subsequent prepayments.

**Art.186.-** A tax payment receipt will be issued for all payments concerning the composite business tax.

**Art.187.-** Taxpayers who are subject to the composite business tax may benefit from the assistance of the tax mediator under the conditions defined by order of the Finance Minister.

*[NB - cf. Order n°4115/MEF/DC/SGM/DGI/DLC of 12 December 2016 that created the position of tax mediator for micro and small enterprises that are members of approved small business management centres in the Republic of Benin]*

#### Section 4 - Rules that are specific to street market traders

**Art.188.-** 1) The rate of the composite business tax payable by street market traders who sell items of low value from displays or inventories is defined by a regulation, but cannot exceed that provided for by Article 183 above.

2) The street market traders referred to in paragraph 1 of this Article are required to obtain a tax payment receipt from the tax offices, which will only be issued to them in exchange for payment in full of the composite business tax for street market traders.

3) A street market trader who provides proof of payment of the tax in a municipality will no longer be taxable in the other municipalities for said same activity.

4) For the application of this Article, the term "street market trader" should be understood to mean not only all traders who peddle their wares, strictly speaking, but also all traders who sell on markets, even when they regularly occupy the same location, and all traders who are set up on private land or on public roads who sell from stalls or who occupy huts or similar premises that are not fixed land structures.

Any individual who transports goods from municipality to municipality, from port to port, or in municipal and suburban Departments, from village to village, even when they sell on behalf of traders, is required to provide proof of payment of the street market trader's composite business tax in their own right.

**Art.189.-** 1) Street market traders are required to pay the entirety of the tax they owe, ahead of time and in one instalment, before 1 March of each year.

2) When a street market trader starts business or requests the renewal of an expired form, the government officer who is responsible for drawing up the notice to pay must immediately issue said trader with a document stating the amount of the taxes that are due.

In order to pay the taxes they owe ahead of time, street market traders must report at their initiative to the tax office for the location where they ply their trade, where they will be issued with a document stating the amount of the taxes they must pay to the tax collection office. Upon presentation of the receipt, they will be provided with their annual composite business tax form for street market trading.

3) Whenever requested, all street market traders are required to be in possession of and present to tax officers, as well as all officers who are specifically empowered for this purpose by the Local Authorities, the documents that prove payment of the composite business tax.

### Section 5 - Assignment of the tax

**Art.190.-** 1) Fifty per cent of the composite business tax is assigned to the State budget and fifty per cent to the budget of the local community where the activity is pursued.

However, the proceeds of the street market trader's composite business tax will be assigned in full to the budget of the local community in which the tax was collected.

2) A deduction of 10% that represents the administrative cost of the tax will be applied to the portion that is assigned to the local community. An order of the Finance Minister will specify the rules on the application of these provisions.

## Chapter 2 - Employer's tax on salaries

**Art.191.-** Natural or legal persons who pay wages, emoluments, salaries and incidental remuneration are required to pay the employer's tax on salaries.

**Art.192.-** (L.F.2023, L.F.2024) The following are exempt from payment of the employer's tax on salaries:

- 1° diplomatic representations and international organisations;
- 2° taxpayers who are subject to the composite business tax;
- 3° new, duly established companies in respect of their first fiscal year, for the employment of employees with Beninese nationality;
- 4° the persons referred to in Article 191 above for two (2) years on the remunerations paid in respect of the first hiring of an employee with Beninese nationality, as from the date of recruitment and provided that the employee is declared to the National Social Security Office;
- 5° natural or legal persons who promote sporting or artistic activities, for the remunerations paid to professional athletes and artists, within the limit of four (4) times the guaranteed minimum wage;
- 6° natural or legal persons, for the remunerations paid to interns under the conditions provided for in Article 120 of this Code;
- 7° domestic employers, whether salaried or not, for remuneration paid to domestic employees, as defined by the laws and regulations governing social security in the Republic of Benin. The exemption is subject to the declaration and payment of contributions to the national social security fund.

The provisions of this Article do not apply to non-profit associations and organisations that do not benefit from an express exemption.

**Art.193.-** The basis of assessment for the employer's tax on salaries is identical to that of the tax on wages and salaries.

**Art.194.-** The rate of the employer's tax on salaries is set at 4%.

It is reduced to 2% for private educational institutions.

**Art.195.-** The employer's tax on salaries is assessed on the same return as the tax on wages and salaries.

It must be paid to the relevant tax collection office under the conditions and within the time-limits specified in Articles 127 to 129 of this Code.

## Chapter 3 - Business-use tax and beverage tax

### Section 1 - Business-use tax

#### Sub-section 1 - Scope of application

**Art.196.-** 1) All natural or legal persons, whether Beninese or foreign, who carry on a commercial, industrial or professional activity in the Republic of Benin that is not expressly included in the exemptions defined below, are subject to the business-use tax.

2) State-owned enterprises of an industrial or commercial nature, as well as government, Departments or municipal agencies of the same nature are also required to pay the business-use tax.

3) Business-use taxes are annual and personal, proof of payment of which can only be used by those persons to whom such proof has been issued.

4) The mere habitual pursuit of a profession or plying of a trade triggers the levying of business-use tax.

**Art.197.-** The following are not subject to the business-use tax:

- 1° the State, Departments, Municipalities and public institutions, for the distribution of water and general utility services. They are taxable for the operation of power plants or railway lines;
- 2° government officers and employees who are paid by said Departments or institutions, but solely for the performance of their duties;
- 3° the master tradesmen of military corps, subject to the same proviso;
- 4° painters, sculptors, engravers and designers who are regarded as artists and who only sell the products of their art;
- 5° university professors of literature, sciences and the creative arts, primary school teachers, heads of establishments and heads of boarding houses;
- 6° editors of periodicals, actors and opera singers;
- 7° farmers, only for the sale and handling of crops and fruits from land that belongs to them or is farmed by them for the livestock they rear, feed or finish thereon;
- 8° mine concession holders, merely for the extraction and sale of the materials they extract; the exemption cannot under any circumstances be extended to the processing of the materials extracted;
- 9° fishermen, even when the boat they use belongs to them;
- 10° musicians;
- 11° public or private institutions, the purpose of which is to care for underprivileged children and to give them the means of having a profession;
- 12° public or private schools, universities, technical and vocational teaching establishments;
- 13° savings or provident institutions that are administered free of charge, duly authorised mutual insurance companies;
- 14° cooperative companies that are formed in accordance with the statutory provisions that govern them, provided that they only sell to and buy from their members, within the limit of their organisational documents;
- 15° the captains of merchant vessels who are not owners and operators, navigators;
- 16° caterers who work for the army;
- 17° assistants and all persons who undertake contract work or per diem work, in the houses, workshops and stores of the membership of their profession; travelling salespersons;
- 18° peddlers of newspapers, flowers, trinkets, fruits, vegetables, herbs, fresh straw, fish, butter, milk, eggs, and other edible products;
- 19° water carriers;
- 20° skilled tradespersons who work at home or in other homes, alone or with a labourer. Young people under the age of sixteen, women who work with their husband, unmarried children who work with their ascendants and mere helpers whose assistance is vital for the pursuit of the profession, are not deemed to be labourers;
- 21° farmers' unions and provident, welfare and mutual insurance institutions in the farming sector;
- 22° savings and credit institutions or cooperative societies, for transactions involving savings inflow and credit distribution;
- 23° taxpayers who are subject to the composite business tax.

**Art.198.-** New, duly established start-ups are exempted from the business-use tax for the first twelve (12) months of business activity.

In respect of the year in which the exemption period expires, the tax is payable as from the first day of the month following that during which the exemption time-limit expired.

### Sub-section 2 - Calculation of the business-use tax

**Art.199.-** (L.F.2024) The business-use tax comprises:

- a) a fixed duty;
- b) a proportional duty calculated on the rental value of the business premises.

#### Paragraph 1 - Fixed duty

**Art.200.-** The fixed duty is determined on the basis of a general rate for all professions, and a specific rate for import and export activities.

**Art.201.-** 1) Persons who are subject to the business-use tax and who have several separate establishments of the same type or of different types, are required to pay a fixed duty on account of the trade, industry or profession carried on in each of said establishments.

2) Workshops, facilities and stores of all types are deemed to constitute separate establishments if:

- they have a specific representative who deals with the public, even if that representative has not been granted a power of attorney by the manager or officer of the business; or
- they have their own inventory of goods or merchandise;
- are located in separate premises, even if said premises are juxtaposed, in the same building, with other establishments of the same business-use taxpayer.

3) Operations that are carried out by a person who is liable to business-use tax on their own premises or on separate premises on behalf of the third party they do or do not represent will always give rise to the levying of separate business-use taxes that are assessed to the third party.

**Art.202.-** 1) The general rate is set as follows:

Turnover brackets	Zone 1	Zone 2
Turnover less than or equal to one billion	XOF 70,000	XOF 60,000
Turnover higher than one billion	XOF 10,000 per additional billion or fraction of a billion should be added to the above rate	

2) The turnover is defined as all the revenue and income received in respect of the previous fiscal year.

3) The zones are defined as follows:

- Zone 1: Atlantique, Collines, Couffo, Littoral, Mono, Ouémé, Plateau and Zou Departments;
- Zone 2: Alibori, Atacora, Borgou and Donga Departments.

**Art.203.-** 1) For importers and/or exporters, the rate of the business-use tax is set according to the amount of imports and exports, as follows:

- less than or equal to 80,000,000 francs: XOF 150,000;
- higher than 80,000,000 and less than or equal to 200,000,000 francs: XOF 337,500;
- higher than 200,000,000 and less than or equal to 500,000,000 francs: XOF 525,000;
- higher than 500,000,000 and less than or equal to 1,000,000,000 francs: XOF 675,000;
- higher than 1,000,000,000 and less than or equal to 2,000,000,000 francs: XOF 900,000;
- higher than 2,000,000,000 and less than or equal to 10,000,000,000 francs: XOF 1,125,000;
- higher than 10,000,000,000 francs: XOF 1,125,000 plus XOF 10,000 per additional billion or fraction of a billion.

2) All persons, companies or enterprises that habitually and on a for-profit basis in the Republic of Benin, carry out import and export operations, are duly liable to the business-use tax in the capacity of importer-exporter, even if they have no local establishment or other commercial premises in that country, or any specific permanent representative, and merely, for the pursuit of their profession, use the services and premises of a specialised company.

### **Paragraph 2 - Proportional duty**

**Art.204.-** 1) The proportional duty is assessed in all places where premises that are used for the pursuit of taxable professions are located.

Persons who are liable to the business-use tax and who have several separate establishments of the same type or of different types, are required to pay a proportional duty in respect of each of said establishments.

2) The proportional duty is established on the basis of the rental value of the offices, stores, boutiques, factories, workshops, hangars, sheds, storage sites, wharfs and other premises and locations that are subject to the single property tax on developed property, with the exception of apartments used for accommodation or housing that are made available to the taxpayer's personnel free of charge.

The proportional duty is due, even if the premises occupied are provided free of charge.

3) The rental value is determined by the order provided for in Article 157 above.

4) Where several persons who are liable to the business-use tax transact business on the same premises, the duty must be paid by each of them on the portion of the rental value that is attributable to them or, in the last resort, on the basis of the total rental value of the premises.

**Art.205.-** 1) The rates of the proportional duty that are applicable to the rental value are as follows, for each municipality:

Locations	Rates
Cotonou	17%
Porto-Novo	17%
Other municipalities of Ouémé and Plateau	13%
Ouidah	18%
Other municipalities of Atlantique	13%



Abomey	14%
Other municipalities of Zou and Collines	13.5%
Parakou	25%
Other municipalities of Borgou and Alibori	15%
Municipalities of Atacora and Donga	15%
Municipalities of the Departments of Mono and Couffo	12%

2) The proportional duty cannot be less than one-third of the fixed duty.

**Art.206.-** 1) Taxpayers are liable to an additional business-use tax levy if, during the year:

- a) they lease premises with a rental value that is higher than that of the premises on the basis of which they were originally taxed;
- b) they set up branches or agencies for the extension of their activities.

2) The additional rental values generated by these modifications must be assessed and made subject to the proportional duty.

**Paragraph 3 - Business-use tax surcharge for the awardees of procurement contracts or tenders**

**Art.207.-** 1) Notwithstanding the provisions of Articles 198 and 199 of this Code, taxpayers who are public works procurement contract or tender awardees are subject to a business-use tax surcharge on the basis of the amount of the tender or contract, at a rate of 0.5%.

2) The basis of assessment, whether for the original contract or the amendment, is the amount exclusive of tax.

**Paragraph 4 - Assignment**

**Art.208.-** The proceeds of the business-use tax will be assigned to the budget of the municipality on the territory of which said tax is based, minus a 10% deduction that represents the administrative cost of the tax.

An order of the Finance Minister will specify the rules on the application of these provisions.

**Sub-section 3 - Business-use tax formula - Taxpayers' obligation**

**Art.209.-** 1) The business-use tax must be declared and paid by the taxpayer using the form provided for that purpose.

2) The business-use tax return must be filed by 30 April each year at the latest.

3) This return, which covers all the establishments owned by an enterprise, must include, in addition to the information on the enterprise's identity, the following information:

- a) the total turnover;
- b) the turnover broken down by establishment, where these establishments are located in separate municipalities from the location of the primary establishment;
- c) the rental value for each establishment, where these establishments are located in separate municipalities from the location of the primary establishment;
- d) the amount of the prepayments made by each establishment;
- e) the balance owed.

4) The taxpayers referred to in Article 206 of this Code are required to declare the additional proportional duty that is owed, at the latest at the end of the month following that during which the modifications arise.

5) All persons liable to the business-use tax who have not filed the above return on time or who have not, within the same timeframe, provided the information needed to draw up said return, or who failed to provide information or who provided insufficient information, will be subject to the penalties provided for in Articles 485 and 486 of this Code.

The total or partial omissions that are identified in the business-use tax returns, as well as errors that are made in the computation of the tax bases or in the application of the rate, can be corrected in accordance with the time-limits and procedures stipulated in the Book of Tax Procedures.

6) The business-use tax surcharge that is payable pursuant to the provisions of Article 207 of this Code must be declared and paid at the latest at the end of the month following that of the contract award or of the amendment, at the relevant tax offices for the place of performance of the contract, failing which the penalties provided for in Article 485 below will apply. The month of award of the contract is defined as the month of the signature, by the principal, of the purchase order, of the service order or any other document that serves the same purpose. In the absence of said signature, the start date of performance will be used.

**Art.210.-** All persons who carry on their activity in a fixed location and are liable to the business-use tax are required, in their establishment, to provide proof of payment of the business-use tax in respect of the current year, when requested to do so by the tax administration's officers.

#### Section 4 - Filing and payment

**Art.211.-** 1) The business-use tax is payable for the period up to and including 31 December of the taxation year.

2) In the event of a business assignment that includes the use of the premises and the sale of the equipment or the goods, if a mutually-agreed request is made by the assignor and the assignee, the business-use tax will be transferred to the assignee.

The request must be made within three (3) months of the assignment of the establishment, in order to be admissible. Under penalty of inadmissibility, it must be accompanied by the receipt for the amounts that have fallen due or that will fall due on the date of the assignment. The transfer of taxes to the party liable will be settled by the revenue agent who is responsible for assessment.

3) In the event of the closure of establishments, stores, boutiques or workshops as a result of death, court-ordered liquidation, declared bankruptcy, expropriation or eviction, the taxes will only be payable for the past and for the current quarter, subject to the persons concerned submitting a claim within fifteen (15) days of the definitive closure; relief will be granted for the remainder of the tax.

**Art.212.-** 1) The business-use tax must be paid in accordance with the following conditions:

- a prepayment of 50% by 10 February at the latest;
- the balance at the latest at the end of April when the return is filed.

2) The business-use tax surcharge must be paid within ten (10) days of the month following that of the notification of the procurement contract or of the amendment.

Enterprises that are awarded a procurement contract for which the business-use tax surcharge exceeds ten million (10,000,000) CFA francs may, subject to submitting a request to the Director General of Taxes, obtain authorisation to pay the surcharge in instalments.

In this case, the business-use tax surcharge will be levied on the basis of the invoices that are issued in respect of the procurement contract. Each remittance of the portion pertaining to an invoice must be made within ten (10) days of the payment of the invoice concerned.

## Section 2 - Beverage tax

### Sub-section 1 - Scope of application

**Art.213.-** 1) All persons or companies who engage in the retail sale of alcoholic or fermented beverages, either to be consumed on-trade or off-trade, must pay a beverage tax, for each sales establishment and with no reductions for branches.

2) A sale is deemed to be all handovers of alcoholic beverages at the time of commercial transactions, whether in the form of trade, barter or even gifts.

3) Alcoholic beverages should be understood to mean fortified wines, vermouth, quinine wines, and all other fermented beverages or beverages that contain more than 12% alcohol by volume, with the exception of pharmaceutical mint alcohol and all other medicinal products that contain alcohol.

**Art.214.-** The beverage tax is independent of the business-use tax and the payment of one does not entail exemption from the payment of the other.

### Sub-section 2 - Computation of the taxes

**Art.215.-** 1) The rate of the beverage tax is defined as follows:

Turnover bracket	Zone one	Zone two
Less than or equal to XOF 500,000,000	50,000	30,000
From XOF 500,000,001 to 1,000,000,000	80,000	60,000
Higher than XOF 1,000,000,000	100,000	100,000

2) The turnover is defined as all the revenue and income received in respect of the previous fiscal year.

The zones are those defined in Article 202 above.

### Sub-section 3 - Filing and payment

**Art.216.-** 1) All the provisions set forth in this Chapter concerning the tax base and the collection of the business-use taxes, the returns that taxpayers are required to file, the issuance of business-use tax forms and transfer requests, are applicable to the beverage tax.

2) The beverage tax must be paid in accordance with the following conditions:

- a prepayment of 50% by 10 February at the latest;
- the balance at the latest at the end of April when the return is filed.

3) Any delay in the payment of the February prepayment and of the balance will trigger the application of a penalty of 10% of the amounts not paid on time.

4) If the beverage tax is not paid, the administrative authority may order the immediate closure of the establishment, without prejudice to the payment in full of the taxes owed in respect of the beverage tax for the current fiscal year.

**Art.217.-** The proceeds of the beverage tax will be assigned to the budget of the municipality on the territory of which said tax is based, minus a 10% deduction that represents the administrative cost of the tax.

An order of the Finance Minister will specify the rules on the application of these provisions.

## Chapter 4 - Sport development tax

**Art.218.-** (L.F.2023) Enterprises whose turnover is higher than or equal to one billion (1,000,000,000) CFA francs are subject to an annual tax known as the sport development tax.

The proceeds of this tax are paid into a fund dedicated to the development of sport. The terms and conditions for the management of these resources are set by joint order of the Ministers responsible for sport and finance.

**Art.219.-** (L.F.2023) Enterprises that own or jointly own a professional sport club that competes in a national championship, for which they incur operating or capital expenditure, are exempt from the payment of the tax.

The above conditions also apply to sport classes.

**Art.220.-** (L.F.2024) 1) The taxable amount is turnover excluding tax for the previous year.

2) The rate of the tax is set at 0.1%.

If the amount invested does not reach the amount of tax payable, the balance is due.

3) The tax is deductible from the basis of assessment for tax on profits and is paid in accordance with the provisions of Article 51 of this Code.

**Chapter 5 - Tax for the removal of household waste**

**Art.221.-** (*L.F.2024*) A tax for the removal of household waste is instituted and is payable by the occupants of buildings and properties subject to the single property tax or which are exempt pursuant to article 153 of this Code.

**Art.222.-** (*L.F.2024*) The rate, methods of collection and allocation of this tax are specified by regulation.



**Book 2 - Indirect taxes****Part 1 - Taxes on turnover****Chapter 1 - Value added tax (VAT)****Section 1 - Scope of application****Sub-section 1 - Taxable business activities**

**Art.223.-** Business that is transacted in the Republic of Benin by natural or legal persons who habitually or occasionally buy to resell or perform transactions that fall within the scope of an industrial, commercial, agricultural, artisanal, extractive or forestry activity, or of a non-commercial activity, excluding activities in the capacity of employee, is subject to value added tax.

**Art.224.-** The following constitute taxable transactions:

1) Imports: an import should be understood to mean the crossing of the customs border of the Republic of Benin for the purposes of release for consumption, of goods that originate from outside the country or goods that are placed under a suspensive customs procedure.

2) Supplies of goods: a supply of goods should be understood to mean the transfer of the power to dispose of a good in the capacity of owner. The following, in particular, are deemed to be a supply of goods:

- a) the supply of water, electricity, gas and telecommunications;
- b) quarriable substances;
- c) hire purchase;
- d) the transfer of a good pursuant to a commission contract for purchase or sale.

3) The exchange, which is regarded as a double sale, and the consumer loan, which includes the return of the goods delivered, trigger the chargeability of value added tax on each of the constituent transactions, namely, a double sale, on the one hand, and delivery and return of goods, on the other hand.

4) Construction work: construction work should be understood to mean works executed by the various trades involved in the construction, maintenance and repair of buildings and real property structures, public works, metal construction works, demolition works, and all ancillary or preliminary works with respect to construction work.

5) Supplies of services: the supply of a service should be understood to mean all operations other than those listed above, which are effected between two legally separate persons and that include valuable consideration in cash or in kind, regardless of the intended objectives and results obtained, in particular:

- a) assignments and licensing of intangible goods;

- b) leasing of going concerns;
- c) rentals of movable property;
- d) rentals of buildings and locations for industrial and/or commercial use;
- e) transactions by intermediaries;
- f) operations involving the maintenance and repair of movable property;
- g) tourism, hotel and catering operations,
- h) transport operations;
- i) services provided by independent professionals;
- j) advertising, press releases, announcements, inscriptions, notices and other similar services;
- k) finance lease transactions;
- l) transactions involving the transfer of money.

6) Operations involving the processing of agricultural and fishery products and all other operations, even those carried out by farmers, fishermen or their cooperative companies which, due to the nature or the extent thereof, are equated to those carried out by manufacturers or traders, regardless of whether or not these operations constitute an extension of the agricultural or fishery activity.

7) Self-supply by a taxable person, for their own needs or for those of their business and supplies provided by them, without valuable consideration, to third parties.

8) Aid to enterprises, whether from a public or private institution, paid in the form of a grant, debt forgiveness, gift or any other similar form:

- a) if the sums paid are in fact the direct consideration for an operation carried out for the benefit of the party making the payment;
- b) or, if the sums paid supplement the price of a taxable transaction.

9) Sales of goods and supplies of services that are effected on Beninese territory or via foreign or local e-commerce platforms.

10) Commissions received by e-commerce platform operators at the time of the transactions described in the preceding paragraph.

**Art.225.-** 1) The following may be made subject to value added tax, subject to an election by the person liable to the tax:

- a) operations for the public transportation of passengers;
- b) the import, manufacture and resale of the exempted products listed in Article 229(2) below;
- c) agricultural activities;
- d) sales and services effected by persons whose annual turnover is less than the threshold defined in Article 228 of this Code.

2) The election must be made expressly by means of a letter sent to the tax office for the location of the principal place of business. The administration has eight (8) days in which to respond to the request. The lack of a response is deemed to constitute acceptance.

The election will take effect as from the first day of the month following that during which it is approved.

The election for liability to value added tax will, as applicable, trigger liability to the tax on business profits or to corporate income tax.



3) Enterprises that make this election must meet the following conditions:

- a) be up-to-date with regard to their tax obligations;
- b) keep proper accounts and be overseen by a member of the national body of certified public accountants, an approved small business management center or an employee accountant who is duly declared to the National Social Security Office;
- c) have at least one business bank account;
- d) have an actual center of administration, the references and description of which must be appended to their request, and display thereon, in a visible manner, the trade name or the business data plate provided for in Article 463 of this Code.

### Sub-section 2 - Taxable persons

**Art.226.-** 1) Natural and legal persons who effect, on a habitual or occasional basis, and in an independent manner, taxable transactions that fall within the scope of application of the tax and that are concluded as part of an economic activity carried on in return for valuable consideration, are taxable persons for the purposes of value added tax.

Employees acting within the scope of their employment contract or by means of any other legal connection that creates a relationship of subordination as regards the working conditions, remuneration terms and the employer's liability, are not regarded as independent contractors.

2) The persons defined in paragraph 1 above are taxable persons for the purposes of value added tax, regardless of their legal status and their situation with regard to other taxes, the form or the nature of their work.

3) Natural or legal persons who effect non-exempt transactions when they generate turnover that is higher than the threshold defined in Article 228 below, are taxable persons who are liable for payment of value added tax.

Enterprises, the turnover of which falls below the stipulated limit, must continue to comply with their filing and payment obligations for three (3) consecutive fiscal years; however, when, during a given year, the turnover limit is attained, liability to value added tax will take effect as from the first day of the month following that of the condition being met.

4) The State, local authorities, public institutions and other organisations governed by public law are not regarded as taxable persons for the activities they carry out in the capacity of public authority. However, the capacity of taxable person is conferred on them for their economic activities that are carried out in return for valuable consideration and that use means and methods that are comparable to those utilised by the private sector.

**Art.227.-** In order to claim the capacity of taxable person, all persons liable to the tax must:

- 1° register with the tax administration and obtain a unique tax identification number under the conditions provided for in Article 460 of this Code;
- 2° keep accounts that comply with the standard system of accounting defined by the Organization for the Harmonization of Business Law in Africa.

**Art.228.-** Natural or legal persons whose turnover or annual revenue is at least equal to the threshold defined by an order of the Finance Minister are taxable persons for the purposes of value added tax, regardless of their legal form or the nature of their activities.

### Sub-section 3 - Exemptions

**Art.229.-** (L.F.2023) The following are exempted from value added tax:

1) The sales and supplies of services effected by persons whose annual turnover excluding tax does not exceed the threshold provided for in Article 228 above, with the exception of those made and provided to the State, the local authorities and the State's companies, establishments and agencies.

This limit on the imposition of taxation is not applicable when the tax administration has drawn up an on-the-spot assessment notice for blatant tax fraud, under the conditions provided for in Article 568 of this Code, in respect of the year or the fiscal year during which said assessment notice was drawn up.

2) The import, production and sale of the following products:

a) Medical products:

Product code	Product name
28.01.20.00.00	Iodine
28.04.40.00.00	Medical oxygen
29.18.22.00.00	O-Acetylsalicylic acids, their salts and their esters
29.30.40.00.00	Methionine
29.32.21.00.00	Coumarin, methylcoumarins and ethyl-coumarins
29.36	Provitamins and vitamins, natural or reproduced by synthesis
29.36.10.00.00	Provitamins, unmixed
29.36.21.00.00	Vitamin A and its derivatives
29.36.22.00.00	Vitamin B1 and its derivatives
29.36.23.00.00	Vitamin B2 and its derivatives
29.36.24.00.00	D- or DL-Pantothenic acid (Vitamin B3 or Vitamin B5) and its derivatives
29.36.25.00.00	Vitamin B6 and its derivatives
29.36.26.00.00	Vitamin B12 and its derivatives
29.36.27.00.00	Vitamin C and its derivatives
29.36.28.00.00	Vitamin E and its derivatives
29.36.29.00.00	Other vitamins and their derivatives
29.36.90.00.00	Other, including natural concentrates
29.37.10.00.00	Pituitary (anterior) or similar hormones, and their derivatives. Adrenal cortical hormones and their derivatives
29.37.21.00.00	Cortisone, hydrocortisone, prednisone (dehydrocortisone) and prednisolone (dehydrohydrocortisone)
29.37.22.00.00	Halogenated derivatives of adrenal cortical hormones
29.37.29.00.00	Other - Other hormones and their derivatives; other steroids used primarily as hormones
29.37.91.00.00	Insulin and its salts
29.37.92.00.00	Oestrogens and progestogens
29.38.10.00.00	Rutoside (rutin) and its derivatives
29.39.10.00.00	Alkaloids of opium and their derivatives; salts thereof. Alkaloids of cinchona and their derivatives; salts thereof
29.39.21.00.00	Quinine and its salts
29.39.41.00.00	Caffeine and its salts - Ephedrines and their salts
29.39.42.00.00	Ephedrine and its salts

29.39.42.00.00	Pseudoephedrine (INN) and its salts
29.39.50.00.00	Theophylline and aminophylline (theophylline-ethylenediamine) and their derivatives; salts thereof. Alkaloids of rye ergot and their derivatives; salts thereof
29.39.61.00.00	Ergometrine (INN) and its salts
29.39.62.00.00	Ergometrine (INN) and its salts
29.39.63.00.00	Lysergic acid and its salts
29.39.70.00.00	Nicotine and its salts
29.40.00.00.00	Sugars, chemically pure
29.41	Antibiotics
29.41.10.00.00	Penicillins and their derivatives with a penicillanic acid structure; salts thereof
29.41.20.00.00	Streptomycins and their derivatives; salts thereof
29.41.30.00.00	Tetracyclines and their derivatives; salts thereof
29.41.40.00.00	Chloramphenicol and its derivatives, salts thereof
29.41.50.00.00	Erythromycin and its derivatives, salts thereof
29.41.90.00.00	Others
29.42.00.00.00	Other organic compounds
30.01	Glands and other organs for organo-therapeutic uses, dried, whether or not powdered; extracts of glands or other organs or of their secretions for organo-therapeutic uses; heparin and its salts; other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included.
30.01.10.00.00	Glands and other organs, dried, whether or not powdered
30.01.20.00.00	Extracts of glands or other organs or of their secretions
30.01.90.00.00	Other
30.02	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products.
30.02.10.00.00	Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes
30.02.20.00.00	Vaccines for human medicine
30.02.30.00.00	Vaccines for veterinary medicine
30.02.90.10.00	Ferments
30.02.90.90.00	Other
30.03	Medicaments (excluding goods of heading n°30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale
30.03.10.00.00	Containing penicillins or derivatives thereof, with a penicillanic acid structure, or streptomycins or their derivatives
30.03.20.00.00	Containing other antibiotics - Containing hormones or other products of heading n°29.37 but not containing antibiotics
30.03.31.00.00	Containing insulin
30.03.39.00.00	Other
30.03.40.00.00	Containing alkaloids or derivatives thereof but not containing hormones or other products of heading n°29.37 or antibiotics
30.03.90.00.00	Other

30.04	Medicaments (excluding goods of heading n°30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.
30.04.10.00.00	Containing penicillins or derivatives thereof, with a penicillanic acid structure, or streptomycins or their derivatives
30.04.20.00.00	Containing other antibiotics
30.04.20.00.00	Containing hormones or other products of heading n°29.37 but not containing antibiotics
30.04.31.00.00	Containing insulin
30.04.32.00.00	Containing adrenal cortical hormones
30.04.39.00.00	Other
30.04.40.00.00	Containing alkaloids or derivatives thereof but not containing hormones, other products of heading n°29.37 or antibiotics
30.04.50.00.00	Other medicaments containing vitamins or other products of heading n°29.36
30.04.90.00.00	Other
30.05	Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes
30.05.10.00.00	Adhesive dressings and other articles having an adhesive layer
30.05.90.00.00	Other
30.06	Pharmaceutical goods
30.06.10.00.00	Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics
30.06.20.00.00	Blood-grouping reagents
30.06.30.00.00	Opacifying preparations for X-ray examinations; diagnostic reagents designed to be administered to the patient
30.06.40.00.00	Dental cements and other dental fillings; bone reconstruction cements
30.06.50.00.00	First-aid boxes and kits
30.06.60.00.00	Chemical contraceptive preparations based on hormones or spermicides
37.01.10.10.00	X-ray film
37.02.10.00.00	X-ray sheet film
38.21.00.00.00	Prepared culture media for development of micro-organisms
38.22.00.00.00	Diagnostic or laboratory reagents on a backing
Prev.39.23.90.00	Plastic urine drainage bag
39.24.90.20.00	Baby bottles
Prev.39.24.90.90	Plastic bedpans
40.14.10.00.00	Sheath contraceptives
39.24.90.10.00	Teats and similar articles
40.14.90.20.00	Douches, droppers and similar articles
40.15.11.00.00	Surgical gloves
63.04.91.00.10	Impregnated mosquito nets
Prev.70.13.99.00	Baby bottles
70.15.10.00.00	Medical glassware
70.17.10.00.00	Of fused quartz or other fused silica
70.17.20.00.00	Of other glass having a linear coefficient of expansion not exceeding 5/1000000 per Kelvin within a temperature range of 0 °C to 300 °C

84.19.20.00.00	Medical sterilizers
87.13	Wheelchairs and other carriages for disabled persons
87.13.10.00.00	Not mechanically propelled
87.13.90.00.00	Other
87.14.20.00.00	Of wheelchairs or other carriages for disabled persons
90.11	Compound optical microscopes, including those for photomicrography, cinephotomicrography or microprojection
90.11.10.00.00	Stereoscopic microscopes
90.11.20.00.00	Other microscopes, for photomicrography, cinephotomicrography or microprojection
90.11.80.00.00	Other microscopes
90.11.90.00.00	Parts and accessories
90.12	Microscopes other than optical microscopes; diffraction apparatus
90.12.10.00.00	Microscopes other than optical microscopes; diffraction apparatus
90.12.90.00.00	Parts and accessories
90.18	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments. Electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters)
90.18.11.00.00	Electro-cardiographs
90.18.12.00.00	Ultrasonic scanning apparatus
90.18.13.00.00	Magnetic resonance imaging apparatus
90.18.14.00.00	Scintigraphic apparatus
90.18.19.00.00	Other
90.18.20.00.00	Ultra-violet or infra-red ray apparatus - Syringes, needles, catheters, cannulae and the like
90.18.31.00.00	Syringes, with or without needles
90.18.32.00.00	Tubular metal needles and needles for sutures
90.18.39.00.00	Other
90.18.41.00.00	Dental drill engines, whether or not combined on a single base with other dental equipment
90.18.49.00.00	Other
90.18.50.00.00	Other ophthalmic instruments and appliances
90.18.90.00.00	Other instruments and appliances
90.21	Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability. Artificial joints and other orthopaedic or fracture appliances, including:
90.21.11.00.00	Artificial joints
90.21.19.00.00	Other
90.21.21.00.00	Artificial teeth
90.21.29.00.00	Other
90.21.30.00.00	Other artificial parts of the body
90.21.40.00.00	Hearing aids, excluding parts and accessories
90.21.50.00.00	Pacemakers for stimulating heart muscles, excluding parts and accessories
90.21.90.00.00	Other

90.22	Apparatus based on the use of X-rays or of alpha, beta or gamma radiations, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, examination or treatment tables, chairs and the like. Apparatus based on the use of X-rays, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus
90.22.12.00.00	Computed tomography apparatus
90.22.13.00.00	Other, for dental uses
90.22.14.00.00	Other, for medical, surgical or veterinary uses
90.22.21.00.00	For medical, surgical, dental or veterinary uses
90.22.30.00.00	X-ray tubes
90.22.90.00.00	Other, including parts and accessories
90.25.11.00.00	Thermometers and pyrometers, liquid-filled, for direct reading

## b) Unprocessed basic foodstuffs:

- bread;
- maize, millets, sorghum, fonio, wheat, rice produced in the Republic of Benin and other cereals;
- manioc, sweet potatoes, yam, potatoes, tarot and other tuber and root crops;
- beans, soy beans, sesame, groundnuts, peas and other leguminous plants;
- onions, tomatoes, aubergines, okra, peppers, and other vegetables and garden produce;
- fruit produced in the Republic of Benin;
- shell eggs;
- fresh meat;
- unprocessed fish (fresh, smoked, salted or frozen);
- unprocessed milk;
- breeding animals;
- waste from the food industries and fish waste.

3) School, university, technical and vocational education activities undertaken by public or private institutions or by assimilated bodies that are under the authority of the Ministry for Education or Higher Education, with the exception of sales of school uniforms, supplies and other goods that are not concerned by education activities.

4) Medical consultations, medical care and all services that are medical in nature, including the transport of injured and sick persons, as well as services that fall within the scope of hospitalisation provided by hospitals, private clinics and other similar establishments, excluding care provided by veterinarians.

5) The typesetting, printing and sale of newspapers and periodicals, with the exception of revenues from advertising, press releases, announcements, inscriptions, notices and other similar services.

6) Books.

7) Postage stamps for franking, revenue stamps and other similar stamps.

8) Services that are provided free of charge or at a price that is equal to or less than the cost price by the associations and organisations referred to in Article 4(9) of this Code and public service institutions.

9) Services that are provided to their members by groupings made up of natural or legal persons that pursue an activity that is exempted from value added tax or for which they do not have the capacity of taxable person, provided that they contribute directly and exclusively to carrying out said exempted transactions or transactions that are excluded from the scope of application of value added tax and provided that the amounts claimed from members correspond exactly to the portion they are required to pay of the common expenditure.

10) Repealed

11) Public passenger transport operations.

12) Bank and insurance transactions that are subject to the tax on financial and insurance activities and gambling subject to the tax on gambling.

13) Transactions, the purpose of which is the transfer of the ownership or usufruct of real property, going concerns or clientele, which are subject to the formality of registration.

14) Rentals of unfurnished buildings for housing.

15) Sales of original art works by their author.

16) Agricultural activities.

17) Gas for domestic use.

18) Photo-sensitive devices, including photovoltaic cells, even those assembled in modules or installed in panels of light emitting diodes.

19) Supplies of services that are directly linked to financial market transactions and effected by financial intermediaries that are approved by the Conseil Régional de l'Épargne Publique et des Marchés Financiers, in particular:

- a) financial engineering consulting associated with market transactions;
- b) the structuring and arrangement of transactions associated with the financial market;
- c) the placement and placement guarantee of securities;
- d) the public offering of securities;
- e) the subscription and purchase of units in Undertakings for Collective Investment in Transferable Securities, investment firms or any other form of collective investment approved by the Conseil Régional de l'Épargne Publique et des Marchés Financiers;
- f) advice on stock market placement or investments;
- g) securities trading;
- h) market making on the secondary market;
- i) keeping of securities accounts;
- j) custody of securities;
- k) financial servicing of securities;
- l) discretionary management;
- m) transfer and pledging of securities;
- n) any other service associated with financial market activities and regarded as such by the Conseil Régional de l'Épargne Publique et des Marchés Financiers.

*[NB - Non-codified VAT exemptions]*

1) *Temporary exemptions - from January 1 to December 31, 2024 for the importation, manufacture and sale of:*

- *new four-wheel vehicles. This measure applies to trucks, buses, coaches and minibuses of all categories, passenger cars and other motor vehicles designed for the transport of people, including double cabin "estate" type cars. (Art.3 L.F.2024).*
- *aircraft and aerostats, as well as their spare parts (Art.4 L.F.2024).*
- *containers for compressed or liquefied gases, in cast iron, iron or steel and accessories (burners, pot supports for 3 and 6 kg bottles, pipes, fittings, regulators, gas stoves without oven and regulator valve) for domestic gas (Art.5 L.F.2024).*
- *new equipment and materials imported into the Republic of Benin, as well as local materials, intended for the construction of service stations, sidewalk stations, oil and diesel tanks; new equipment imported for the renovation of service stations, sidewalk stations, oil and diesel tanks (Art.8 L.F.2024).*

2) *Permanent exemption from the importation of new materials and equipment imported into the Republic of Benin by SMEs not benefiting from an exceptional tax regime, intended for the installation of artisanal and industrial units (Art.7 L.F.2024).]*

**Art.230.-** Exports of products and goods, to which the following are deemed equivalent, are also exempted from value added tax through the application of a rate of zero to the basis of assessment:

1) The sales, repair or conversion of buildings intended for maritime shipping and registered as such.

2) Sales to shipping companies and to professional fishermen of products designed to be incorporated into their buildings or the maintenance thereof, as well as of machines and nets for sea fishing.

3) The bunkering of ships and aircraft departing to a point outside the country.

4) The sale, repair, conversion and maintenance of aircraft for airline companies, the services of which to points outside the country represent at least 60% of all the routes they operate.

5) Entries into private customs warehouses, public customs warehouses, special warehouses or any other suspensive procedure, under the same conditions as for import duties and subject to the actual export of the goods concerned.

6) Supplies of services associated with goods placed under the transit customs procedure, with the exception of those effected in the Republic of Benin where the service provider has the seat of their activity in that country or a permanent establishment from which the service is provided or, if not, their domicile or habitual residence.

For carrying out the operations referred to above, exporting enterprises benefit from the right to deduct the value added tax paid to suppliers under the conditions provided for in Articles 243 et seq. of this Code.

**Art.231.-** 1) Public procurement contracts may benefit from exceptional treatment, which involves the Beninese State taking responsibility for the indirect taxation. Indirect taxation should be understood to mean, on the one hand, the customs duty and the customs border taxes and, on the other hand, the domestic taxes on turnover, that are paid by



the contract holder, on the price and values of the goods, merchandise and supplies acquired or incorporated into the performance of the contract.

This special procedure is that provided for in the fiscal contractual requirements of public procurement contracts.

2) Clauses of public procurement contracts that violate these provisions are not enforceable against the tax administration.

#### Sub-section 4 - Territoriality

**Art.232.-** All business that is transacted in the Republic of Benin is subject to value added tax, even if the residence or the registered office of the taxable person is located outside of the territorial limits.

**Art.233.-** 1) The place of delivery of a good is deemed to be situated in the Republic of Benin if the good is located in that country:

- a) at the time of delivery;
- b) or, if the good is transported, when dispatch or transport to the purchaser begins.

2) If the dispatch or transport of the good begins outside of national territory, the place of import is deemed to be situated in the Republic of Benin.

3) If the good is for installation or assembly by or on behalf of the supplier, the place of delivery is deemed to be situated at the location where the installation or assembly is carried out.

**Art.234.-** 1) Supplies of services that are materially locatable are taxable in the Republic of Benin if they are performed in that country.

The following, in particular, are deemed to be materially locatable:

- a) hiring out of means of transport;
- b) supplies of services connected with immovable property;
- c) cultural, artistic, sporting, scientific, educational and entertainment services;
- d) the provision of accommodation and on-trade sales;
- e) work on and valuations of movable tangible property;
- f) the services of intermediaries, acting in the name and on behalf of other persons.

2) Supplies of intangible services are taxable in the Republic of Benin if the beneficiary has their tax residence in that country, within the meaning of Articles 5 and 121 of this Code.

The following, in particular, are deemed to be intangible services:

- a) transfers and assignments of copyrights, patents, licences, trademarks and other similar rights;
- b) the hiring out of movable tangible property, with the exception of means of transport;
- c) advertising services;
- d) the services of consultants, engineers and consultancy bureaux in all fields, including those of the organisation of research and development;
- e) the services of accountants, lawyers and legal and tax counsels who are duly registered;
- f) services of the other liberal professions;

- g) data processing and the provision of information;
- h) supply of staff,
- i) services supplied by intermediaries, acting in the name and for account of another person in the supplies of services referred to above;
- j) radio and television broadcasting services.

3) The commissions of travel agencies on sales of travel documents are deemed to have been received in the Republic of Benin if the agency is an enterprise that is operated in said country, regardless of the destination, means of transport or the headquarters of the transport company.

## Section 2 - Chargeable event and chargeability

### Sub-section 1 - Chargeable event

**Art.235.-** 1) The chargeable event for value added tax corresponds to:

- a) for imports, the release for consumption within the customs meaning of the term;
- b) for supplies of services, the performance of the services;
- c) for construction work, the execution of the works;
- d) for sales, exchanges and contract work, the delivery of the goods;
- e) for self-supply, the first use of the good or service.

2) The chargeable event cannot be deemed to have occurred, under any circumstances, after a complete or partial invoice has been issued.

### Sub-section 2 - Chargeability

**Art.236.-** 1) The chargeability of the value added tax occurs:

- a) for imports, when the declaration of release for consumption of the goods is registered;
- b) for supplies of services, construction work and procurement contracts with the State, local authorities, and State companies, establishments and agencies, at the time of receipt of the price, payments on account or advance payments;
- c) in all the other cases, when the chargeable event occurs.

2) For operations other than imports, the payment of advances or payments on account will render the tax chargeable on the amount of said payment, regardless of whether or not the operation has been physically carried out.

## Section 3 - Basis of assessment and rate

### Sub-section 1 - Basis of assessment

**Art.237.-** 1) The basis of assessment for value added tax comprises:

- 1° for imports, the customs value of the goods, increased by the duties and taxes of all types, in particular customs duties and excise duties, excluding the value added tax itself and the tax on the sale of electronic communications services;
- 2° for deliveries of goods sold and for supplies of services, all monies, assets, property or services received or receivable in consideration for the delivery or the supply;

- 3° for construction work, the amount of the bills, procurement contracts, invoices or payments on account;
- 4° for self-supplies by taxable persons, the purchase price of similar goods or services or, failing that, their cost price;
- 5° for transactions effected by temporary employment agencies involving the recruitment of manpower for other enterprises, the remuneration of the services, but only if it is invoiced separately from the amount of the gross salary;
- 6° for the grants to enterprises referred to in Article 224(8) of this Code, the amount of the consideration that triggers liability to value added tax. If this amount is not clearly stipulated by the organisation that is paying the grant, the entire grant will be subject to value added tax.

**Art.238.-** (L.F.2024) 1) For transactions involving intermediaries that are effected by travel agencies and tour operators, the basis of assessment is comprised of the margin, which is defined as the difference between the price, including all taxes, paid by the customer, and the price, including all taxes, invoiced to the agency or to the organiser by the carriers, hotel operators, caterers, live entertainment organisers and the other taxable persons who physically carry out the services used by the customer.

2) Optionally, for catering and similar activities and processing activities of local products, the tax base is the margin determined by application of a rate set by order of the Minister responsible for Finance. The option for margin taxation must be exercised before 1st January of the tax year.

3) Taxable persons who pay value added tax on the margin cannot deduct input value added tax.

**Art.239.-** The following are included in the basis of assessment:

- 1° the incidental expenses of the supplies of goods and services invoiced to customers;
- 2° the taxes, duties and charges, including the excise duties, but excluding value added tax;
- 2° the price supplements paid for various reasons by the purchaser of the goods or the customer;
- 4° the amounts received by the taxable person in the form of deposits when packaging is delivered.

**Art.240.-** The following are excluded from the basis of assessment:

- 1° cash discounts, deductions, discounts and rebates, and other price reductions that are granted, provided that they in practice, and for their exact amount, benefit the customer, and that they are shown on the initial or amended invoice and do not constitute remuneration for any form of service;
- 2° disbursements that are only reimbursements of expenses and that are cross-charged to the customer for their exact amount;
- 3° amounts that are received in the form of deposits when recoverable and reusable packaging is delivered, provided that the amounts paid for the deposit are individually identified on the invoice. When this packaging is not returned upon expiration of the customary time-limits for the profession, value added tax is payable on the sale price.

### Sub-section 2 - Rate

**Art.241.-** The rate of value added tax is set at 18%.

**Art.242.-** In the event of public procurement or direct award contracts for works or supplies, the applicable tax base and rate will be those that are in force on the date of signature of the contract.

## Section 4 - Rules on deductions

### Sub-section 1 - Principle of the right to deduction

**Art.243.-** The input value added tax that was borne on the elements of the price of a taxable transaction is deductible from the value added tax that is applicable to that transaction.

**Art.244.-** 1) In order to be deductible, the value added tax must be shown:

- a) for imports, on the release for consumption declaration, together with proof of payment issued by the duly empowered levying authority;
- b) for self-supply, on the declarations filed by the person liable to the tax;
- c) in the event of withholding of the value added tax, on a receipt provided by the customer which proves that the tax was withheld;
- d) in all other cases, on a standard invoice.

2) The goods or services for which deduction is requested:

- a) must be necessary for operations and used exclusively for the purposes thereof;
- b) must be recognised in the accounts;
- c) must not be the subject of an exclusion that is expressly provided for by the law.

3) The value added tax, deduction of which is requested, must be invoiced by a taxable person who is liable for payment. The list of taxable persons who are liable for payment is published periodically by the General Tax Directorate and a VAT certificate confirming taxable person status is issued to all persons liable for payment upon request.

**Art.245.-** 1) The right to deduct value added tax arises when the input tax becomes chargeable for the supplier of the goods and services.

For imports, the right to deduction arises at the time of the release for consumption.

2) The value added tax that was borne on the individual price elements of a taxable transaction during a given month is deductible in respect of that month.

Deductions that were not taken into account in respect of the period defined above can be mentioned on the declarations that are filed at the latest on 30 April of the year following that of the omission.

Nevertheless, the person liable to payment is under an obligation to pay by cheque, credit card or bank transfer purchases of goods or supplies of services that are equal to or exceed one hundred thousand (100,000) CFA francs excluding value added tax, failing which the penalties provided for in Article 503 of this Code will apply.

**Art.246.-** 1) Taxable persons for the purposes of value added tax apply deductions under their responsibility and can be required to provide proof at any time of the actual use of the goods, acquisition of which granted the right to deduction.

2) All unjustified deductions will give rise to the payment of the corresponding tax, without prejudice to the application of the penalties provided for in Article 486 below.

### **Sub-section 2 - Exclusion of the right to deduction**

**Art.247.-** The following are excluded from the right to deduction, even when the goods or services concerned are used to effect transactions that grant the right to deduction:

1) Purchases of passenger vehicles or vehicles for private and business use, as well as their parts, spare parts and accessories, with the exception of:

- a) vehicles purchased by professional renters or finance lessors;
- b) vehicles stored by dealers that are intended for sale;
- c) vehicles used for driver instruction.

This exclusion also applies to value added tax on the rental price of said vehicles.

2) The fuel costs for vehicles, with the exception of those incurred for vehicles that are exclusively used for activities involving the public transport of persons or goods that are subject to value added tax.

3) The expenses incurred for the housing or accommodation of corporate officers and of the personnel who are responsible for the surveillance or security of the enterprise, as well as entertaining, restaurant, live entertainment and travelling expenses, excluding expenses that are incurred in order to meet the collective needs of the personnel in the workplace.

4) Entertaining, catering and live entertainment expenses, or expenditure on luxuries. This exclusion does not concern tourism, catering and live entertainment professionals, within the scope of their professional activity.

5) Housing furniture and materials.

6) Gifts and donations, including those that take the form of advertising, of a unit value excluding value added tax of more than ten thousand (10,000) CFA francs, as well as goods, the purchase price of which is set at a level that is significantly below the market price and under conditions such that in reality it appears to constitute a donation.

7) Services pertaining to goods that are excluded from the right to deduction.

### **Sub-section 3 - Limit on the right to deduction**

**Art.248.-** Taxable persons who do not exclusively effect transactions that trigger the right to deduction must, as soon as their expenses are incurred, allocate them either to their taxable activities, or to their non-taxable activities:

- 1° where the goods and services exclusively contribute to the completion of operations that grant the right to deduction, the value added tax on those goods and services is deductible;

- 2° where the goods and services exclusively contribute to the completion of operations that do not grant the right to deduction, the value added tax on those goods and services is not deductible;
- 3° where the goods and services contribute to both the carrying out of transactions that grant the right to deduction and the carrying out of transactions that do not grant the right to deduction, only a fraction of the tax on those goods and services is deductible, by application of a deductible proportion.

**Art.249.-** 1) The deductible proportion provided for in Article 248 is made up of a fraction having:

- a) as the numerator: the total amount, exclusive of value added tax, of the revenues or turnover attributable to transactions that are subject to value added tax, increased by the amount of the exports of taxable products;
- b) and, as the denominator: the total amount, exclusive of value added tax, of the turnover or revenues of all types generated by the taxable person.

2) The following are not included in the fraction used to calculate the proportion:

- a) self-supply;
- b) disposals of non-current assets;
- c) sales of second-hand goods;
- d) equipment subsidies;
- e) the reimbursements of disbursements received by an agent and that are not subject to value added tax;
- f) indemnities that are not consideration for a transaction that is subject to value added tax.

3) The proportion must be rounded up to the nearest unit.

4) The proportion must be determined provisionally on the basis of the turnover for the previous year, or, for new taxable persons, the forecast turnover.

All the deductions applied on the basis of a provisional proportion during the previous fiscal year must be adjusted, at the latest by 30 April of the following year, taking into account the definitive proportion.

#### **Sub-section 4 - Adjustment of value added tax**

**Art.250.-** 1) In the event that a change occurs in the activity of the enterprise, the value added tax that was previously deducted must be adjusted in accordance with the conditions defined in this article.

2) The following, in particular, require adjustment of value added tax:

- a) the ceasing of business activities;
- b) the destruction of property;
- c) the disposal of an asset that is not subject to value added tax;
- d) the disposal of an asset that is subject to value added tax in the event that the disposal value excluding value added tax is lower than the net carrying value on the disposal date;
- e) abandonment of the capacity of taxable person for the purposes of VAT;
- f) use of a good for an activity or use that does not grant the right to deduction.

3) However, no adjustment is required in the following duly justified cases:

- a) accidental destruction of goods;
- b) scrapping or discarding of goods that have become unusable or unsellable;
- c) theft of goods.

4) Taxable persons must pay over:

- a) for goods that are not subject to depreciation, the amount of the tax deducted at the time of purchase of said goods, commensurately with the number of goods that remain in stock on the date of the event that triggers the cancellation of the deduction;
- b) for depreciable assets, a fraction of the same tax calculated in proportion to the remaining depreciation period; all partial years are counted as whole years;
- c) in the scenario described in paragraph 2(d) of this Article, the amount of the value added tax that is applicable to the difference between the net carrying value on the date of disposal and the sale price.

5) The person liable for payment must pay over the tax within thirty (30) days of the event that led to the right of deduction being challenged. All delays or non-compliance will trigger the application of the penalties provided for in Articles 487 et seq. of this Code.

**Art.251.-** 1) The value added tax paid at the time of sales or services that are subsequently terminated, cancelled or remain unpaid can be recovered via offsetting against the tax that is owed for transactions that are effected at a later date.

2) For cancelled or terminated transactions, the recovery of the tax paid is contingent on drawing up and sending the customer a new invoice referred to as a "credit note".

3) For unpaid transactions where the debt is actually and definitively unrecoverable, the adjustment of the invoice involves sending a duplicate of the original invoice with the regulatory wording, as well as the following notice "*invoice outstanding for the amount of ..., which is the price excluding value added tax, and for the amount of ..., which is the corresponding value added tax that cannot be deducted*".

#### **Sub-section 5 - Reimbursement of value added tax credits**

**Art.252.-** 1) If the amount of the authorised deduction is higher than the amount of the tax that is chargeable in respect of a given declaration, the excess constitutes a tax credit that can be offset against the chargeable tax for the following period.

2) The tax credits generated by the deduction mechanism can be offset indefinitely against the value added tax that is payable for subsequent periods, until the credit has been used up.

3) Tax credits for value added tax cannot be reimbursed to the taxable person, except in the scenarios provided for in Articles 253 below.

**Art.253.-** The following persons may obtain the reimbursement of the value added tax credits they hold at the end of a two-calendar month period:

- 1° manufacturers;
- 2° taxable persons who, for more than half of their annual turnover, carry out export transactions or transactions that are equated thereto;

- 3° taxable persons who acquire capital goods that trigger the right to deduction, for a value of more than forty million (40,000,000) CFA francs including all taxes;
- 4° taxable persons who definitively discontinue their business activity.

**Art.254.-** 1) The request for reimbursement must be sent to the Director General of Taxes at the latest on the last day of the month following the time-limit specified in the preceding article.

2) Reimbursement can only be obtained if the taxable person does not owe the treasury any amounts whatsoever in respect of all types of taxes and duties.

3) The request must be accompanied by a copy:

- a) of the documents that mention the deductible value added tax;
- b) of the export declarations;
- c) of the export documents that are duly signed by the managers of the bank that handles the amounts generated by sales abroad and the customs office that confirmed the cross-border movement of the goods;
- d) of the invoice for the purchase of capital goods;
- e) or of all supporting documents.

However, while waiting for a servicing bank to define the conditions for repatriation of sums generated by sales to a State of the West African Economic and Monetary Union (WAEMU) that uses a currency other than the CFA franc, the presentation of the duly signed export documents provided for in section (c) of this paragraph is not required for the reimbursement of the value added tax credit associated with said exports.

**Art.255.-** 1) Requests for reimbursement of value added tax must be reviewed within one month of the date of receipt thereof.

2) Those that are found to be justified after review by the tax office will give rise to the issuance of a tax refund certificate approved by the Finance Minister. Said Minister may delegate his power to the Director General of Taxes.

3) The tax refund certificate may be remitted by the beneficiary as payment of value added tax that is owed in respect of other taxable transactions. It may also be transferred by endorsement to a customs broker to be used for the same purposes.

4) As applicable, the tax refund certificate may be remitted as payment for other State taxes that are owed by the beneficiary, with the exception of withholding taxes.

**Art.256.-** 1) Reimbursements of value added tax credits will be effected according to the standing of the taxpayers making the request, who are classified as low-risk, medium-risk or high-risk enterprises:

- a) for low-risk enterprises, the reimbursements will be paid automatically for the amount requested, without a prior approval procedure being implemented. The mere filing of a complete request will trigger the direct implementation of the reimbursement procedure;
- b) for medium-risk enterprises, reimbursements will be paid following a review and approval procedure for the credits;
- c) for high-risk enterprises, reimbursements are only possible following a general accounting inspection procedure.



2) Low-risk enterprises are deemed to be those that are duly located, up-to-date with their tax obligations and that, on the date on which their application is filed, meet the following cumulative criteria:

- a) have been members, for at least one year, of the Large Business Directorate's portfolio;
- b) do not owe any tax in arrears, including in connection with a tax dispute;
- c) do not carry out exports of goods by land;
- d) have not received any challenges, following a tax audit, to the reimbursements from which they benefitted over the last three (3) years.

Low-risk enterprises that benefitted from an automatic reimbursement will undergo an ex post audit to approve their credits. This ex post audit may take the form of a general inspection of the accounts, an ad hoc audit or a documentary audit.

3) Medium-risk enterprises are deemed to be those that are duly located, up-to-date with their tax obligations and that, on the date on which their application is filed, meet the following cumulative criteria:

- a) are part of the portfolio of the Large Business Directorate or that of a tax office for medium-sized enterprises;
- b) do not owe any tax in arrears;
- c) have not received any challenges to the reimbursements of the value added tax credits from which it benefitted during a fiscal year following an audit.

Medium-risk enterprises that benefitted from reimbursement following a review and approval procedure may undergo a general inspection of the accounts.

4) High-risk enterprises are deemed to be those that do not belong to any of the above categories.

5) Without prejudice to the downgrading of the status of the taxpayers referred to above, the tax adjustments that are applied at the time of ex post audits of low-risk or medium-risk taxpayers, who benefitted from the reimbursement of credits, will trigger the application of the penalty provided for in Article 486(4) of this Code, with no possibility of forgiveness.

**Art.257.-** 1) The reimbursement of the value added tax and/or the offsetting of the amount to be refunded against other duties and taxes owed, will be effected in exchange for submission of the original tax refund certificate.

2) The original of the tax refund certificate, after the credit has been used in full, as well as the documents to prove the use of the value added tax credit that are authorised by the tax office, is attached to the revenue and expenditure account by the Treasury.

## Section 5 - Obligations of liable persons

### Sub-section 1 - Filing and payment

**Art.258.-** 1) Value added tax is the responsibility of consumers or users of goods and services; however, it must be paid by persons who effect taxable transactions in their own right or on behalf of third parties that are or are not established in the Republic of Benin.

2) a) The value added tax owed on sales of goods and supplies of services that are effected by means of e-commerce platforms, must be calculated, declared and paid over by the operators of said platforms, on behalf of suppliers. The value added tax that is payable on commissions received at the time of sales effected in the Republic of Benin by means of e-commerce platforms, must be declared and paid over by the operators of said platforms.

b) For the purposes of fulfilling their aforementioned tax obligations, the operators of e-commerce platforms are required to submit a registration request to the tax administration under the conditions provided for by Article 460 of this Code.

c) Without prejudice to the penalties provided for in Book 4 of this Code concerning general provisions, failure to comply with the obligations stipulated in paragraph 2, sections a and b of this Article, will trigger the suspension of access to the platform from Beninese territory.

d) The rules on the implementation of these provisions will be specified by a regulation.

**Art.259.-** 1) All taxable persons for value added tax purposes are required to file with the tax office at the latest on the tenth of each month, for the preceding month, a return that conforms to the template provided and that states:

- a) the amounts of their taxable and non-taxable transactions;
- b) the gross amount of the tax assessed;
- c) the details of the deductions applied;
- d) the amount of the chargeable tax or, as applicable, of the tax credit.

2) Any delay in filing the monthly return and paying the corresponding tax will trigger a penalty that is calculated in accordance with the provisions of Articles 485 and 487 of this Code.

3) The chargeable tax must be paid directly and voluntarily in support of said return.

**Art.260.-** All persons who mention value added tax on an invoice or any other document in lieu thereof are liable to said value added tax merely on account of the invoicing thereof.

**Art.261.-** For imports:

- 1) the person liable is required to state separately on the release for consumption declaration the customs value of the merchandise or product and the unique tax identification number.
- 2) the computation and the payment of value added tax, the identification of offences, and the handling of disputes are subject to the same procedural rules as for customs duties.

**Art.262.-** 1) When the taxable person is not a resident of the Republic of Benin, they must designate a representative who is a resident of the Republic of Benin, who undertakes to carry out all the necessary formalities and to make all the payments that fall due, in the place and stead of the taxable person.

2) If this is not the case, the value added tax, as well as the penalties, will be payable by the recipients or beneficiaries of the taxable transactions and by any natural or legal

person who, on account of their position in the execution of the transaction, is tasked with invoicing the service or collecting the sums owed on behalf of the foreign service provider.

### Sub-section 2 - Withholding of value added tax

**Art.263.-** 1) For all operations involving services, supplies or deliveries to the State, the local authorities, and the State's companies, establishments and agencies, the tax will be withheld by the department that is responsible for payment.

However, the Finance Minister may, as required, exempt certain enterprises that are potentially in a situation of having a structural credit, from the aforementioned withholding. This power may be delegated to the Director General of Taxes.

2) The rate of the withholding is set at:

- 100% for enterprises that are liable to the composite business tax;
- 40% for the other taxpayers.

3) Notwithstanding the above provisions, the Director General of Taxes is empowered to request a 100% withholding for supplies of goods and supplies of services between private entities in the scenarios provided for in Article 256(3) and (4) above.

4) The amount of the withholding must be paid over in the month during which it was applied or at the latest on the tenth of the following month.

Failure to pay over withholdings applied within the above time-limits will trigger the application of the penalties provided for in Articles 491 et seq. of this Code.

5) Business transactions that are subject to withholding must be reported on the return that is filed in respect of the month in which payment was received. The withheld value added tax must be stated under the deductions heading.

## Chapter 2 - Tax on financial and insurance activities

### Section 1 - Scope of application

**Art.264.-** (*L.F.2024*) The tax on financial and insurance activities is levied on:

1) Transactions effected by banks, currency exchange offices and financial institutions, in particular the trade of securities, animating securities, the transfer and pledge of securities, financial canvassing, business finding, financial engineering and advice on investment or stock market investments, with the exception of transactions for the custody of securities.

2) Remuneration received on financial transactions carried out in the Republic of Benin, in particular commissions and interest received on credits, loans, advances, commitments by signature and bank transfers of money, excluding rapid transfers:

- a) commissions are constituted by remuneration for services rendered. These include:
  - account management fees;
  - costs of presenting bills for acceptance;
  - fees for collecting non-domiciled bills;

- commissions received during transactions involving transferable securities, with the exception of securities custody fees and portfolio management fees;
  - securities placement commissions (shares and bonds);
  - profits from foreign exchange transactions;
  - b) interest received on customer credits includes:
    - business loans;
    - financing of foreign trade;
    - real estate loans;
    - non-real estate loans to individuals;
    - commitments by signature, in particular refinancing agreements given in favor of or received from financial intermediaries and confirmed credit openings to customers.
- 3) All other remuneration for operations not expressly included in the exemptions provided for in Article 265 of this Code.
- 4) Insurance policies.

**Art.265.-** (L.F.2024) The following are exempted from the tax on financial and insurance activities:

- 1° transactions effected by the BCEAO;
- 2° transactions involving loans and credits to the Treasury and to local authorities;
- 3° transactions involving assignments of special certificates of wage claims against the State;
- 4° transactions involving credits, loans, advances, account deposits, commitments or similar transactions effected between banks, between banks and financial institutions, and between financial institutions, regardless of whether they have an establishment in the Republic of Benin;
- 5° finance lease transactions that are subject to value added tax;
- 6° loan transactions granted by banks to social or low-cost housing enterprises that are accredited as such, for which the reference prices are defined by the public authorities;
- 7° transactions involving credits, loans, advances and account deposits, commitments or similar transactions effected between decentralised financial systems approved by the State, between decentralised financial systems approved by the State and banks, and between decentralised financial systems approved by the State and financial institutions, regardless of whether or not they have an establishment in the Republic of Benin;
- 8° transactions involving savings inflow or credit distribution effected by companies that have decentralised financial system status;
- 9° reinsurance transactions, without prejudice to the provisions of Article 266 below;
- 10° life and health insurance policies;
- 11° export credit insurance;
- 12° fast money transfer transactions, which are subject to value added tax.

**Art.266.-** 1) All insurance policies for which the risk is located outside of national territory, or that is not connected to an industrial, commercial or agricultural establishment located in the Republic of Benin, are exempted from the tax.

If the situation in practice is not certain or there is no certain connection with an industrial, commercial or agricultural establishment, the risks are deemed to be located at the domicile or the principal establishment of the policyholder.

2) However, the policies mentioned in paragraph 1 cannot be used in the Republic of Benin, in a public instrument, in court or before any other relevant authority, unless they have first undergone the certificate of payment formality for stamp and registration duty.

This formality must be carried out in consideration for payment of tax on all the amounts stipulated for the benefit of the insurer, with respect to the remaining years.

Reinsurance of the risks referred to above is subject to the provisions of this Article.

**Art.267.-** The chargeable event for the tax corresponds to:

- 1° the crediting of the amount of the interest to the account of the beneficiary of the loans, advances and similar operations;
- 2° the performance of the service;
- 3° the payment of the insurance premium.

### Section 2 - Basis of assessment and rate

**Art.268.-** 1) The basis of assessment is made up of the gross amount excluding tax of the interest, fees and other remuneration charged by the banks and financial institutions or, for inter-company loans, by the lender.

2) For insurance matters, the tax is levied on the amount of the sums specified for the benefit of the insurer and on all incidental payments received by the insurer, directly or indirectly, on an account of the insured.

**Art.269.-** The rate of the tax is set at:

- 20% for insurance against fire;
- 5% for transport insurance;
- 10% in all other cases.

### Section 3 - Filing and payment

**Art.270.-** 1) The filing, control and collection rules, as well as the obligations and penalties, are those provided for concerning value added tax.

2) For insurance companies that have more than one establishment, each establishment is regarded as being liable for payment in its own right.

**Art.271.-** 1) In matters relating to insurance, the tax paid can only be refunded in the event of the termination, cancellation or judicial rescission of the insurance policy, to the extent of the fraction pertaining to the amounts stipulated for the benefit of the insurance company and the incidental payments related thereto:

- a) reimbursement of which to the insured was ordered by the judgment or the decision;
- b) which, having given rise to effective payment of the tax, despite not yet having been paid to the insurance company, can no longer, according to the provisions of the court decision, be demanded from the insured by the insurance company.

2) Action for recovery is time-barred after one year, as from the date on which the judicial decision has become definitive and, in all cases, five (5) years at the latest after the payment.

### Chapter 3 - Tax on gambling activities

**Art.272.-** (L.F.2023) 1) Gambling activities are subject to a tax known as the tax on gambling activities.

The tax is based on the sale price of the tickets or cards for the various games made available to the public. The rate of this tax is 10%.

2) However, for online games, the tax is based on the net proceeds of the various games made available to the public. This net income is defined as the difference between the gross turnover achieved or the amount of sums wagered by bettors and the winnings and bonuses paid to customers. The tax rate is 25%.

3) The tax is collected and paid over by the enterprise that organises the games.

4) The filing, control and collection rules, as well as the obligations and penalties, are those stipulated for value added tax.

### Chapter 4 - Tax on the sale of electronic communications services

**Art.273.-** 1) The sale of electronic communications services, with or without valuable consideration, and that are provided on networks that are open to the public, is liable to a tax.

2) Sales of services provided with or without valuable consideration are also liable to the tax where they concern:

- transfers of money effected by any technical medium or means that is traceable, in particular by electronic, mobile telephony or wire transfer means, or via telex or facsimile transmission, with the exception of bank transfers and transfers for the payment of taxes, duties and charges;
- cash withdrawals following a transfer of money made to financial institutions, telephone companies or other specialised entities.

3) The tax base is the sale price of the service excluding value added tax. The tax is not included in the basis of assessment for value added tax.

For the services listed in paragraph 2 of this Article, the base in CFA francs cannot be less than the amounts defined below, including where the service is provided free of charge.

- withdrawals:
  - withdrawal of XOF 1 to 50,000: XOF 400
  - XOF 50,001 to 200,000: XOF 1,500
  - XOF 200,001 to 500,000: XOF 3,500
  - XOF 500,001 to 1,000,000: XOF 6,000
  - XOF 1,000,001 to 2,000,000: XOF 10,000
- domestic transfers:

- withdrawal of XOF 1 to 500,000: XOF 100
  - XOF 500,001 to 750,000: XOF 200
  - XOF 750,001 to 1,000,000: XOF 300
  - XOF 1,000,000 to 1,500,000: XOF 400
  - XOF 1,500,001 to 2,000,000: XOF 500
  - transfers outside of Benin:
    - withdrawal of XOF 1 to 50,000: XOF 500
    - XOF 50,001 to 300,000: XOF 2,500
    - XOF 300,001 to 600,000: XOF 5,000
    - XOF 600,000 to 1,000,000: XOF 8,000
    - XOF 1,000,001 to 1,500,000: XOF 12,500
- 4) The rate of the tax is set at 5% of the price of the service excluding value added tax.
- 5) The tax is collected and paid over by the operator or supplier that provided the service.
- 6) The filing, control and collection rules, as well as the obligations and penalties, are those stipulated for value added tax.

## Part 2 - Excise duties

### Chapter 1 - Tax on specific products

#### Section 1 - Scope of application

**Art.274.-** 1) A tax on specific products is established that is applicable to certain products that are imported or manufactured in the Republic of Benin and delivered for domestic consumption.

2) The tax is levied on all imports or sales of products listed by Article 277 of this Code that are effected with or without valuable consideration and, in law or in fact, delivered in the Republic of Benin.

3) Self-supplies by manufacturers for their own use or allocation for private use are deemed to be sales.

**Art.275.-** The chargeable event for the tax corresponds to:

- 1° for imports, the release for consumption within the customs meaning of the term;
- 2° for production, the first sale effected under the conditions defined above.

#### Section 2 - Basis of assessment and rate

**Art.276.-** 1) The basis of assessment for the tax corresponds to:

- a) for imports, the customs value increased by the duties and taxes levied upon entering the country, with the exception of value added tax;
- b) for domestic transactions, the ex-works sale price, excluding value added tax.

2) The amounts received by the taxable person in the form of a deposit when delivering recoverable and reusable packaging are excluded from the basis of assessment.

3) When a seller enterprise and a purchaser enterprise are, regardless of their legal form, dependent on each other, the special value added tax owed by the first must be based not on the value of the deliveries it makes to the second, but on the sale price applied by said second enterprise.

**Art.277.-** The rate of the tax is set as follows:

- 1° cigarettes, cigars, cigarillos, smoking tobacco and other manufactured tobacco substitutes: 50%;
- 2° alcoholic beverages:
  - beers and ciders: 20%;
  - wines: 40%;
  - liquors and champagnes: 45%;
- 3° non-alcoholic beverages:
  - non-alcoholic energy drinks: 20%;
  - non-alcoholic beverages, with the exception of still water: 7%;
  - imported mineral water: 20%;
  - imported fruit juice: 20%;
- 4° wheat flour: 1%;
- 5° imported pastas: 5%;
- 6° food oils and fat substances:
  - preparations for prepared soup or broths: 10%;
  - food oils and other fat substances: 1%;
- 7° coffee, tea: 10%;
- 8° perfumery and cosmetic products: 15%;
- 9° plastic bags: 5%;
- 10° marble, gold ingots and precious stones: 10%.

**Art.278.-** The amount of the specific tax applied to tobacco and cigarettes is allocated as follows:

- 80% for the treasury;
- 20% for the promotion of sport.

### Section 3 - Filing and payment

**Art.279.-** The tax is levied at the customs border by the General Customs Directorate on behalf of the General Tax Directorate.

For domestic transactions, the tax is collected and paid over by the producer.

**Art.280.-** 1) The filing, control and collection rules, as well as the obligations and penalties, are those stipulated for value added tax.



## Chapter 2 - Single specific tax on petroleum products

### Section 1 - Scope of application

**Art.281.-** The single specific tax on petroleum products is levied on:

- 1° imports of petroleum products;
- 2° the initial sales of petroleum products by refineries located in the Republic of Benin, including the amounts they draw off for their own requirements.

**Art.282.-** The chargeable event corresponds to the crossing of the customs border, the delivery or the drawing off.

### Section 2 - Basis of assessment and rate

**Art.283.-** 1) The basis of assessment is determined by the number of litres or kilogrammes sold or drawn off.

2) The rate of the tax is:

- XOF 65 per litre for premium fuel;
- XOF 55 per litre for ordinary petrol;
- XOF 0 per litre for oil;
- XOF 20 per litre for diesel;
- XOF 17 per litre for lubricants (oils);
- XOF 0 per litre for fuel oil;
- XOF 23 per litre for greases;
- XOF 0 per litre for butane.

3) Depending on changes in the international prices of petroleum products and taking into account the quantitative objectives defined in the State budget, the government is authorised to modify this rate by a regulation.

### Section 3 - Filing and payment

**Art.284.-** The tax is levied at the customs border by the General Customs Directorate, at the time of the release for consumption, on behalf of the General Tax Directorate.

For domestic transactions, the tax is collected and paid over by the producer.

2) The filing, control and collection rules, as well as the obligations and penalties, are those stipulated for value added tax.

## Chapter 3 - Tax on passenger vehicles

### Section 1 - Scope of application

**Art.285.-** 1) A tax is introduced on passenger vehicles, the power rating of which for tax purposes is equal to or higher than 13 CV.

2) This tax is levied on:

- a) imports of taxable vehicles;
- b) the first assignment of taxable vehicles produced in the Republic of Benin that is effected with or without valuable consideration. Self-supplies by the importer for their own use or allocation for private use are deemed to be sales.

**Art.286.-** Taxable vehicles that are acquired by diplomatic and consular missions or by international organisations are exempted from the tax.

**Art.287.-** The chargeable event for the tax corresponds to:

- 1° for imports, the release for consumption within the customs meaning of the term;
- 2° for production, the first sale for which the vehicle is delivered on the territory of the Republic of Benin.

### Section 2 - Basis of assessment and rate

**Art.288.-** 1) The basis of assessment is comprised of:

- a) for imports, the customs value increased by the duties and taxes levied upon entering the country, with the exception of value added tax;
- b) for domestic transactions, the ex-works sale price excluding value added tax.

2) When a seller enterprise and a purchaser enterprise, regardless of their legal form, are dependent on each other, the tax owed by the first must be based not on the value of the deliveries it makes to the second, but on the sale price applied by said second enterprise.

**Art.289.-** The rate of the tax is set at 10%.

### Section 3 - Filing and payment

**Art.290.-** 1) The tax is levied at the customs border by the General Customs Directorate on behalf of the General Tax Directorate.

For domestic transactions, the tax is collected and paid over by the producer.

2) The filing, control and collection rules, as well as the obligations and penalties, are those stipulated for value added tax.

## Part 3 - Other indirect taxes

### Chapter 1 - Tourist tax

**Art.291.-** All customers who stay in a hotel or similar establishment or in furnished accommodation, regardless of the duration of the stay, are required to pay a tourist tax.

**Art.292.-** The amount of the tax is determined as follows, on the basis of the prices applied:

- rate less than or equal to XOF 20,000: XOF 500 per day or per night;
- rate higher than XOF 20,000 and less than or equal to XOF 100,000: XOF 1,500 per day or per night;
- rate higher than XOF 100,000: XOF 2,500 per day or per night.

**Art.293.-** This tax, which must be incorporated into the customer's bill, is collected by hotels and similar establishments, as well as by establishments that offer furnished accommodation.

It is not included in the basis of assessment for value added tax.

**Art.294.-** 1) Hotel receptions are required to keep the following documents:

- a) a police register;
- b) an occupancy daybook or table;
- c) a working copy of the daily and monthly cash and bank ledger.

2) If the bookings are managed and the accounts kept electronically, the filer is required to set up procedures in order to meet the requirements of regularity, back-up and security of the data, as well as access thereto at all times, through an integrated IT system. Said system is subject to an approval procedure.

3) The terms of application of the preceding sub-paragraph will be defined by a joint order of the Ministers for Tourism and Finance.

**Art.295.-** 1) The filing, control and collection rules, as well as the obligations and penalties, are those stipulated for value added tax.

### Chapter 2 - Local development tax

#### Section 1 - Scope of application

**Art.296.-** The local development tax is levied on agricultural, forest, animal, fish and mining products, surface and groundwater, as well as revenues from the operation of tourist attractions.

**Art.297.-** (L.F.2024) The following are subject to the local development tax:

- 1° producers of cotton and of all other agricultural products and their derivatives;

- 2° wholesale purchasers of cashew nuts and other oilseeds, and of food crop, fish, wood charcoal, poultry, fruit and vegetable products;
- 3° timber growers;
- 4° sellers or brokers of livestock (intermediaries between sellers and purchasers of livestock);
- 5° livestock farmers who lead herds under transhumance;
- 6° operators of mining products (quarried substances);
- 7° operators of national parks, museums and other tourist attractions;
- 8° producers of mineral water and persons who draw off surface water for various purposes.

**Art.298.-** 1) Taxable persons are required to incorporate the local development tax into their prices and to collect said tax from their customers.

2) Where the price is set by the State, the taxable person must incorporate the local development tax into the price structure, and separately identify the tax in said structure. If not, the price set will be deemed to include the local development tax.

**Art.299.-** The chargeable event for the local development tax is:

- 1° the sale, for cotton and all other agricultural products and their derivatives, crop products (cereals, legumes, sugar beet, cassava and other flours, fruits and vegetables, root and tuber vegetables, garden produce, etc.), livestock and fish products;
- 2° the crossing of the territory, for herds under transhumance;
- 3° the transportation, for cashew nuts and other oilseeds, mining and forestry products (sawn lumber, wood charcoal, boles, unbarked logs, poles, etc.);
- 4° the receipt of payment, for the operating revenues of national parks, museums and other tourist attractions;
- 5° the sale, for mineral water;
- 6° the draw-off, for surface water.

## Section 2 - Rate

**Art.300.-** (L.F.2023, L.F.2024)1) The amounts and the rates of the local development tax are:

- XOF 1 to 2 per kg of rice sold;
- XOF 1 to 5 per kg of other cereals, legumes, sugar beet, cassava and other flours, tuber and root crops, cotton, and fish products sold
- XOF 0.20 to 1 per kg of palm bunches;
- XOF 1 to 5 per kg of cashew nuts and other oilseeds;
- XOF 0 to 5 of other products, such as garden produce, fruits and vegetables;
- XOF 500 to 1,000 per plank transported;
- XOF 500 to 2,000 per bole transported;
- XOF 500 to 700 per cubic metre (m<sup>3</sup>) of log transported;
- XOF 5 to 10 per pole transported;
- XOF 1 to 2 per kg of non-timber forest products (shea nuts) and of wood charcoal transported;
- XOF 100 to 200 per head of cattle under transhumance or in transit;
- XOF 25 to 100 per head of poultry sold;
- XOF 25 to 500 per non-conventional species (rabbit, cane rat, etc.) sold;

- XOF 100 to 500 per head of pork sold;
- XOF 100 to 500 per head of small ruminant (kid, goat, mutton, etc.) sold;
- XOF 500 to 1,000 per head of large ruminant (beef, camel, etc.) sold;
- XOF 200 to 500 per cubic metre (m<sup>3</sup>) of quarry substances transported falling under category A of the Mining Code;
- XOF 2,000 to 5,000 per truckload of granite transported falling under categories B and C of the Mining Code;
- 5% to 10% of the gross revenue received by the operators of national parks, museums and other tourist attractions;
- XOF 1 to 5 per seedling sold;
- XOF 1 to 5 per litre of mineral water sold;
- XOF 10 to 20 per cubic metre (m<sup>3</sup>) of water drawn off for surface water.

2) By a decision of the elected representatives of the local authorities, the amounts and rates applied will be set annually within the above brackets. If not, the taxes will be assessed using the amounts and rates for the previous year.

### Section 3 - Filing and payment

**Art.301.-** 1) The filing, control and collection rules, as well as the obligations and penalties, are those stipulated for value added tax.

2) The local development tax is levied in one instalment by the municipality in the jurisdiction of which the taxed item is located.

3) The customers of taxable persons are jointly and severally liable for the payment of the local development tax.

**Art.302.-** 1) Any taxable person who has not paid the local development tax in the relevant municipality may be pursued and taxed by any other municipality.

In this case, the entirety of the local development tax will be paid over to the municipality referred to in the first sub-paragraph of this Article.

2) The proceeds of the tax base and collection penalties will be shared between the municipality in whose jurisdiction the taxed item is located, the municipality that apprehended and taxed the evading party, and the latter municipality's tax office.

**Art.303.-** The local development tax may be withheld under conditions defined by a regulation.

### Chapter 3 - Special flat-rate levy on second-hand vehicles

**Art.304.-** 1) A special flat-rate levy of fifty thousand (50,000) CFA francs applies to the import of all second-hand vehicles.

2) The term "second-hand vehicle" should be understood to mean vehicles that were registered for the first time prior to being imported.

3) The chargeable event for the levy is the unloading or crossing of land borders.

4) The levy is collected at the customs border by the General Customs Directorate on behalf of the General Tax Directorate.

#### Chapter 4 - Tax on grazing rights

**Art.305.-** 1) Municipalities may introduce a tax on grazing rights by a decision of the municipal council.

2) This tax is levied on each animal that comes to graze on the territory of the Republic of Benin, and is assessed to the owner of the animals.

3) The amount of this tax is set at one hundred (100) to five hundred (500) CFA francs per animal and per year.

**Art.306.-** 1) Taxpayers who have paid the tax to the tax collection officer will be issued with a receipt that states on the recto the total amount of the payment and on the verso the number and the type of the animals, as well as the amount of tax respectively applied to each species.

2) In the event that the tax is collected by the officially authorised representative outside of the administrative centre of the Departments or Municipalities, a permit taken from a stub book that states the number and type of the animals, as well as the amount of the tax collected, will be issued.

3) The receipt and the permit are valid for the grazing period that falls during the year in which they are issued.

4) In the event of evasion confirmed by an official report, persons in breach are required to pay an additional tax equal to double the amounts evaded.

#### Chapter 5 - Tax on live entertainment, games and leisure

**Art.307.-** 1) Any municipality may, by a decision of its council, establish a tax on live shows, games and entertainment that are held at venues or in the homes of persons who are not subject to value added tax or to the tax on gambling activities.

2) The tax is levied on:

- a) cinema screening events;
- b) theatre, variety show and circus performances;
- c) theme parks and games of skill;
- d) fairground games and shows;
- e) discotheques and night clubs;
- f) coin-operated devices that are located in public places;
- g) authorisations to play hand drums at family, traditional or religious ceremonies;
- h) the organisation of balls or communal festivities;
- i) in general, all authorisations for high-noise events.

3) The rate of the tax is set at 1% to 5% of the revenues, either per establishment or per device operated, or per day.

4) The tax must be paid:

- a) monthly, at the latest on the tenth of each month for permanent establishments;
- b) the working day following the last day of one-off performances or events;
- c) before the authorisation is issued, where this is necessary and where the amount of the tax is not defined as a percentage of the revenues.

5) Where the tax is not paid voluntarily to the tax collection officer within the time-limits stipulated, a penalty will be applied that is equal to 20% of the amount of the tax, and a commensurate collection order will be issued by the municipal budgets officer.

The penalty will be increased to 40% in the event of bad faith and 80% in the event of fraudulent practices, false declarations or tax evasion.

## Chapter 6 - Tax on the sale of artisanal fermented beverages

**Art.308.-** 1) Any municipality may, by a decision of its council, establish a tax on the sale of artisanal fermented beverages.

2) The tax is payable by all traders who sell such beverages, regardless of whether the sale takes place in fixed establishments or on markets.

3) The rate of the tax is set as follows:

- XOF 5 to 100 per on market sales;
- XOF 100 to 1,000 per 20 litre bottle;
- XOF 1,500 to 6,000 per year and per establishment.

4) The tax is payable in one instalment for the entire year and must obligatorily be paid before 1 April of each year.

5) The sellers of drinks that are liable to the tax and who have not paid it within the specified time-limit will be required to pay a 20% penalty if their good faith is not called into question. The penalty is increased to 40% in the event of bad faith and 80% in the event of fraudulent practices.

6) Upon presentation of the collection receipt or of the receipt for payment to the tax collection officer, the relevant administrative authorities will issue a seller's tax card that confers authorisation to sell. This card must be shown whenever requested.

## Chapter 7 - Tax on advertising

**Art.309.-** All municipalities may, by a decision of their council, establish a tax on advertising that uses painted posters, billboards, display panels, or sound devices.

**Art.310.-** The tax is levied on:

- 1° posters on plain paper, whether printed or handwritten, that are displayed on walls, or in a public location;
- 2° painted posters, billboards and, in general, all posters other than those printed on paper, that are displayed in a public place, even if they are not placed on a wall or on a building;

- 3° advertising by means of sound devices, in particular loudspeakers or electronic musical instruments, regardless of whether they are fixed or mounted on vehicles or automobiles, without prejudice to public policy regulations on the use of these devices.

**Art.311.-** Advertising that is effected on behalf of the State, public institutions and local authorities is exempted from the tax.

**Art.312.-** 1) The rate of the tax is set as follows:

- XOF 750 to 3,000 per m<sup>2</sup> on plain paper per year;
- XOF 3,000 to 18,000 per m<sup>2</sup> of painted poster per year;
- XOF 50,000 to 225,000 per billboard per year;
- XOF 75,000 to 375,000 per display panel per year;
- XOF 5,000 to 50,000 per sound device and per day.

2) Where a poster has several panels, each panel will be treated as a separate poster and the tax will be payable for each of the panels.

**Art.313.-** With respect to the posters referred to in Article 310(1) of this Code, the tax is levied prior to the operation by the affixing of adhesive revenue stamps.

**Art.314.-** 1) With respect to the means of advertising referred to in Article 310(2) and (3) of this Code, the tax is levied prior to the posting or setup of said means.

2) The posting or display of said posters must be declared to the mayor by the beneficiary of the advertising or by the posting company, and contain the following information:

- a) the nature and the wording of the poster;
- b) the surname, first names, profession or corporate name, home address or registered office address of the persons or authorities for the benefit of which the advertising is undertaken.

All modifications made to a poster must be the subject of a new declaration.

3) The failure to file a declaration triggers a penalty of 20%, increased to 40% in the event of bad faith and 80% in the event of fraudulent practices.

**Art.315.-** The tax is levied on the basis of collection orders issued by municipal budget officers and paid at the tax collection offices.

## Chapter 8 - Tax on the consumption of electricity and water

**Art.316.-** 1) A tax is established on the consumption of electricity and water.

2) This tax is levied according to the quantity of electrical energy and water consumed by users.

3) Service contracts for streetlighting and public lighting are exempted from payment of the tax.

4) The rate of this tax is set as follows:

- a) consumption of low voltage electricity:



- XOF 2/kWh for the Atlantique, Littoral, Ouémé, Plateau, Mono and Couffo Departments;
- XOF 3/kWh for the Zou, Collines, Borgou, Alibori, Atacora and Donga Departments;
- b) consumption of medium voltage electricity: XOF 1/kWh throughout national territory.
- c) consumption of water: the rate is set by a regulation.

5) The tax is collected, at no charge, by the electricity and water distribution companies at the same time as the amount of their bills.

It is paid over to the tax collection officers by these companies within the first ten (10) days of the month after each quarter.

6) Fifty per cent of the tax is assigned to the State budget and 50% to the budget of the local authority.



**Book 3 - Registration duties - Stamp duties****Part 1 - Registration duties**

**Art.317.-** Registration is a tax formality that triggers the payment of a duty that is collected for the benefit of the State budget.

**Chapter 1 - Scope of application****Section 1 - Instruments that are subject to registration**

**Art.318.-** The following are obligatorily subject to the formality of registration, unless they are exempted therefrom by a provision of the law:

- 1° transfers of title to real property or of rights in rem in immovable property;
- 2° public sales of movable property;
- 3° assignments of the right to a lease, of going concerns or of clientele;
- 4° disposals of shares, equity interests, bonds or debt securities;
- 5° the corporate instruments that are exhaustively listed under this title;
- 6° partitions of companies, ownership in common or communities of property;
- 7° leases for movable property or real property, property finance leases;
- 8° public procurement contracts and orders for the supply of goods, works or services, and the sub-contracting agreements for these contracts;
- 9° annuities;
- 10° transfers without valuable consideration;
- 11° judicial instruments;
- 12° the instruments referred to in Articles 353 and 354 of this Code.

Instruments other than those listed above may be voluntarily subjected to the formality of registration by any interested party.

**Art.319.-** 1) Unless provided for by law, registration duties cannot be the subject of any exemption, exoneration, leniency or suspension for any reason whatsoever.

2) Instruments that are exempted from registration duty by a legislative provision or by an international agreement must still undergo the formality of registration and will be registered free of charge.

**Section 2 - Territoriality**

**Art.320.-** 1) All the instruments referred to in Article 318 above must be registered in the Republic of Benin, if they are entered into or used on national territory.

2) Instruments entered into abroad are obligatorily subject to the formality and to registration duties in the Republic of Benin where they concern:

- a) real estate, going concerns or the right to a lease located in the Republic of Benin;
- b) securities in companies registered in the Republic of Benin.

3) Instruments entered into in the Republic of Benin and that concern real estate, a going concern, the right to a lease or securities in companies located or registered outside of Benin, are only subject to the formality of registration in the Republic of Benin if voluntarily submitted by the parties.

### Section 3 - Chargeable event and chargeability

**Art.321.-** The chargeable event and the chargeability of the registration duties correspond:

- 1° for assignments and conveyances, to the transfer of title, usufruct or enjoyment;
- 2° for public procurement and similar contracts, to the notification of the contract award;
- 3° in all other cases, to the signature of the instrument.

## Chapter 2 - General tax base principles

### Section 1 - Basis of assessment

**Art.322.-** 1) The proportional duties are based on the value stated by the parties in the instruments and returns.

2) However, the tax administration may adjust the price or the valuation of a property that was used as a basis for the levying of a tax where said price or said valuation appears to be lower than the market value of the property transferred or described in the instruments or returns.

3) In the event of a disagreement over the values between the parties and the tax administration, the matter can be referred to the Conciliation Commission provided for in Article 560 of this Code.

**Art.323.-** 1) The duties to be levied are determined according to the external form of the instruments or the substance of their provisions, without taking into account their validity, or any causes whatsoever of subsequent rescission or annulment.

2) If amounts and values are not determined in an instrument or a judgment that give rise to the proportional duty, the parties are required to provide them, prior to registration, by means of a detailed estimated declaration that is certified and signed at the foot of the instrument.

3) Concerning conveyances and agreements that are subject to a condition precedent, the applicable rates and the taxable values are determined as of the date of fulfilment of the condition.

## Section 2 - Dependent or independent provisions

**Art.324.-** 1) Where an instrument contains two provisions for which the duty rates are different, but which, due to their interrelatedness, are not likely to give rise to multiple duties, the provision used as a basis for levying the duty is the one that will give rise to the highest rate.

2) However, where dependent provisions are subject to rates of different types that make comparison impossible, it is the duty pertaining to the primary provision that is chargeable.

**Art.325.-** 1) Where, in any instrument whatsoever, there are several independent provisions or provisions that are not necessarily derived from each other, a specific duty will be payable for each of them, according to their type.

The proportion of the various rights will be determined by the provisions of this Code.

2) Independent provisions and provisions that are not subject to the proportional duty are exempted from the multiple duties provided for in paragraph 1 of this Article.

Where an instrument contains several independent provisions, some of which give rise to the proportional duty and others to a fixed duty, the fixed duty will not be levied, unless the highest fixed duty is applied as a minimum tax levy if the amount of the chargeable proportional duties is lower.

## Section 3 - Value of bare ownership and usufruct

**Art.326.-** The value of the bare ownership and usufruct of movable property and real property is determined as follows:

1) For transfers in return for valuable consideration, by the price expressed, increased by all the capital expenses.

2) For transfers without valuable consideration, the taxable value of the bare ownership and of the usufruct is determined in accordance with the following table:

Age of the usufructuary	Value compared to full ownership:	
	of the usufruct	of the bare ownership
Under 20 years of age	7/10	3/10
Under 30 years of age	6/10	4/10
Under 40 years of age	5/10	5/10
Under 50 years of age	4/10	6/10
Under 60 years of age	3/10	7/10
Under 70 years of age	2/10	8/10
Over 70 years of age	1/10	9/10

To determine the value of bare ownership, only usufruct in effect on the date of the transfer of said bare ownership is taken into account.

However, for cases of successive usufruct, when the usufruct is transferred, the bare owner will have the right to reimbursement of a sum equal to that which would not have been

paid, if the duty paid by the bare owner had been calculated according to the age of the new usufructuary. The action to obtain reimbursement that is available to the bare owner has a limitation period of two (2) years, as from the date of the death of the previous usufructuary.

3) For transfers without valuable consideration, if the usufruct is granted for a fixed duration, it must be estimated at two-tenths (2/10) of the value of full ownership for each period of ten (10) years of the duration of the usufruct, with no fractions and without taking into account the age of the usufructuary.

4) No amount is payable for recombining the usufruct with the bare ownership, where this results from the death of the usufructuary or the expiration of the period stipulated for the duration of the usufruct.

### Chapter 3 - Setting of the duties

**Art.327.-** Instruments are registered free of charge, where the duties are payable by:

- 1° the State, the local authorities and public institutions;
- 2° the National Social Security Office;
- 3° associations founded under the rules of the Law of 1 July 1901, for which the original donation or, in the absence thereof, 80% of the annual revenue, is comprised of public funds;
- 4° persons who benefit from legal aid under the conditions provided for by the legislation in force.

**Art.328.-** 1) With the exception of instruments that are registered free of charge, a minimum of two thousand five hundred (2,500) CFA francs must be levied for the registration of instruments, the amount and values of which would not generate more than two thousand five hundred (2,500) CFA francs of proportional duty.

2) The instruments and declarations that are exempted from the registration formality are subject to the fixed duty of two thousand five hundred (2,500) CFA francs in the event of submission for registration on a voluntary basis or by order.

### Section 1 - Changes of ownership

**Art.329.-** Within the meaning of this section, the following are deemed to be changes of ownership in return for valuable consideration: sales, auctions, assignments, reassignments, auctions of property owned in common, contributions to companies or partnerships in return for valuable consideration, giving in payment and all other civil, extrajudicial or judiciary actions that concern transfers of ownership or usufruct of movable or real property.

#### Sub-section 1 - Changes of ownership of real property

**Art.330.-** 1) The tax base for the registration duties is determined by the price expressed in the instrument of conveyance of real property, and by adding thereto all the capital expenditure, as well as all the indemnities stipulated for the benefit of the transferor, for any reason and on any basis whatsoever, or by an expert estimate.

2) Where the conveyance concerns both real property by definition and real property due to its intended use, a specific price and a detailed description are required for the latter.

**Art.331.-** (L.F.2024) 1) Conveyances in return for valuable consideration of real property, rights in rem in immovable property or units of companies that predominantly deal in real estate within the meaning of Article 109 of this Code are subject to a duty of 5%.

However, the following are registered free of charge:

- a) instruments of conveyance for real property executed in the name of commercial or industrial companies, for transactions that do not exceed fifty million (50,000,000) CFA francs; Real estate whose transfers have been registered under these conditions must be held by the transferee company for at least ten years. Transfer before the expiry of this period gives rise to the immediate payment of duties not previously paid, with application of the penalty provided for in articles 487 and 488 of this Code;
- b) credit sales and hire-purchases of houses or apartments, whose unit price or market value does not exceed six million (6,000,000) CFA francs; the price of the land itself is taxed at the ordinary rate for real property conveyances.

2) Auctions for which the bidding is reopened after the buyer was unable to pay the price bid are subject to the 5% duty, but only for the portion of the price that exceeds the previous winning bid, if the duty was paid in respect thereof.

If this is not the case, the sale by auction is subject to a fixed duty of five thousand (5,000) CFA francs.

3) Declarations of agency following a sale of real property by auction or by deed, if the declaration is made more than three (3) days following the signature of the contract or where the option of agency not been reserved therein, are subject to the duty on the conveyance of real property in return for valuable consideration.

If this is not the case, the declaration of agency is subject to a fixed duty of five thousand (5,000) CFA francs.

4) In the event of a sale with an option to repurchase for the same price, the proportional duties are only payable at the time of the initial sale. If the seller exercises its right of withdrawal within the contractual time-limits and at the most within a time-limit of five (5) years after the date of the initial sale, the registration will trigger payment of a fixed duty of two thousand five hundred (2,500) CFA francs.

**Art.332.-** Exchanges of real property are subject to a duty of 2%.

The duty is levied on the value of one of the portions, where there is no return. If there is a return, the duty is paid at a rate of 2% on the smaller portion, and in the same way as for real property conveyances in return for valuable consideration on the return or the cash payment.

**Art.333.-** Sufficient evidence of the conveyance of real property for an application for registration duties and for action to be taken against the new owner to obtain payment can take the form:

- 1° either, of the submission of a land title;

- 2° or, of the submission of a deed conferring a right of use of property, as defined by the regulations on property;
- 3° or, of leases entered into by the new owner, or of transactions or other instruments that evidence said owner's ownership or usufruct.

### Sub-section 2 - Changes of ownership of movable property

**Art.334.-** 1) Transfers in return for valuable consideration of going concerns or clientele, and of a professional office or practice are subject to a 5% duty.

2) Said duty is levied on the sale price of the clientele or goodwill, the assignment of the right to a lease and of the items of movable property or other items that are used to operate the concern. These items must give rise to a detailed, estimated statement of assets and liabilities in a separate document, three (3) original counterparts of which must remain on record at the tax office where the formality is required.

3) Sales of inventories of goods that are the result of the assignment of a going concern are exempted from registration duties where they give rise to the levying of value added tax.

If this is not the case, said goods are subject to a duty of 2%, provided that a specific price is stipulated with regard to them, and that they are described item by item, in a separate statement that is attached to the registered instrument. Where these conditions are not fulfilled, the general 5% duty applies.

4) The change in the ownership of going concerns or of clientele is sufficiently established for the levying and collection of registration duties and penalties, by the instruments or written documents that reveal the existence of the change or that are intended to make it public, as well as by the assessment of taxes to the new owner, unless there is proof to the contrary.

**Art.335.-** 1) All assignments of a right to a lease or of the benefit of a promise of a lease concerning all or part of a building, regardless of the form that is given to them by the parties, and regardless of whether they are described as an assignment of key money, a departure indemnity or otherwise, are subject to the 5% registration duty.

2) This duty is levied on the amount of the sum or indemnity stipulated by the assignor for its benefit or on the actual market value of the assigned right, determined by an estimated declaration submitted by the parties, if the agreement does not contain any express provisions of a sum or indemnity for the benefit of the assignor or if the sum or indemnity stipulated is less than the actual market value of the assigned right. The duty thus levied is independent of that which may be payable for the enjoyment of the leased properties.

3) The provisions of this Article are applicable to all agreements, the effect of which is to terminate a lease for all or part of a building, in order to replace the terminated lease with a new lease for the benefit of a third party.

4) Finance leases for going concerns are registered free of charge. The acquisition of the concern by the finance lessee will give rise to the payment of conveyance duty on the



conveyance price, regardless of the market value of the property on the date on which it was acquired by the lessee.

**Art.336.-** 1) Public sales of movable property other than the movable property listed in Articles 334 and 335 of this Code are subject to a duty of 1%.

2) This duty is levied on the price expressed and the capital expenses that may be added to the price or by an estimate by the parties if the value is higher than the price plus the expenses.

**Art.337.-** Transfers in return for valuable consideration of the ownership or usufruct of aircraft or boats used for maritime or inland travel must be registered for a fixed duty of five thousand (5,000) CFA francs.

However, transfers of ownership in return for valuable consideration of yachts or pleasure boats between individuals are subject to registration duties at the rate of 1%, with a minimum of five thousand (5,000) CFA francs.

**Art.338.-** Instruments concerning assignments of bonds and of debt securities are registered free of charge.

### Sub-section 3 - Simultaneous changes of ownership of movable and real property

**Art.339.-** Where a change of ownership in return for valuable consideration includes movable property and real property, the registration duty is levied on the entirety of the price, at the rate paid for real property, unless it is stipulated that there is a specific price for the movable property and unless said movable property is described and estimated item by item in the contract.

## Section 2 - Leases

**Art.340.-** 1) For leases, sub-leases and extensions of building leases, the tax base for the duties is determined by the stated annual price excluding taxes, plus the charges imposed on the lessee, or on the actual rental value of the leased properties if said value is higher than the price plus the charges.

2) If the price of the lease or of the rental is stipulated as being payable in kind or on the basis of the price of certain products, the proportional duty will be assessed according to the value on the date of the contract, determined by an estimated declaration by the parties.

3) If the amount of the duty is spread over several periods, this estimate is only valid for the initial period. For each of the subsequent periods, the parties are required to file a new estimated declaration of the value of the products on the date of the start of the period that is used as a basis to assess the amount of the duties.

**Art.341.-** 1) The following are subject to the 1% duty:

- a) fixed-term building leases, whether for a defined term or renewable tacitly for defined periods, as well as the sub-leases and contractual or statutory extensions of leases of the same type;

- b) construction leases.

This rate applies to the cumulated amount of the rent for the entire period. In the event of renewal of a lease, in particular by means of tacit renewal, a new duty is payable on the new period.

If the lease is stipulated for a term of more than three (3) years, or for fixed-term leases that are renewable tacitly for defined periods, the duty may be split, in accordance with the provisions of Article 367 of this Code.

2) Lifetime leases for real property and those that have an indefinite term are subject to the duty provided for changes in ownership of real property in return for valuable consideration, which is applicable:

- a) for lifetime leases, to a capital made up of ten (10) times the annual price including the charges, plus the initial lease payments and other charges;
- b) for indefinite-term leases, to a capital made up of twenty (20) times the annual price including charges, including the initial lease payment if one is stipulated.

3) Instruments that create emphyteusis are subject to a duty of 1%.

The duty is assessed with no splitting on the cumulated amount of the payments for the entire duration of the lease, plus the additional charges stipulated in the lease, on the basis of an estimated declaration, where necessary.

4) The 1% leasehold tax, paid annually, is also levied on property finance leases, on the stipulated amount of the rent payments.

**Art.342.-** 1) Movable property leases are subject to a duty:

- of 1% if they are entered into for a fixed term;
- of 5% if they are entered into for an indefinite term.

2) However:

- a) leases for movable property that are subject to value added tax are exempted from registration. This exemption does not apply to leases entered into in the form of public procurement contracts and that are subject to the duty provided for by Article 346 of this Code;
- b) finance leases for movable property are not subject to the leasehold tax or the duty on change of ownership when property is acquired by the lessee.

### Section 3 - Partitions

**Art.343.-** 1) Partitions of movable and real property between joint owners, joint heirs and joint partners, on any basis whatsoever, are subject to a duty of 0.5%.

The duty is assessed on the amount of the net partitioned assets.

2) In the event of an equalizing payment or a refund, the duty payable is that applicable to changes of ownership in return for valuable consideration for the property concerned.

**Art.344.-** In partitions of estates including the allocation to only one of the co-partitioners of all the movable or real property that makes up a single farming business with a value

that does not exceed twenty million (20,000,000) CFA francs, the value of the shares and interests of said property acquired by the co-partitioner to whom the business is allocated will be exempted from duty on the equalizing payment and refund if, when the estate passes to the heirs, said co-partitioner lives on the farm and effectively participates in the farming business.

However, if, within a time-limit of five (5) years, the beneficiary of the allocation were to cease their personal involvement in the farming business or die without their heirs continuing it, or if the business is sold by them or by their heirs, within the same time-limit, in whole or for a fraction that exceeds one-quarter of the total value at the time of the partition, duties on changes of ownership will become chargeable.

#### Section 4 - Annuities

**Art.345.-** 1) Purchases of perpetual or lifetime annuities, or pension purchases, their assignments, transfers or other changes of beneficiary, as well as the reimbursements or commutations of annuities and payments of all types, are subject to a duty of 1%.

2) The basis of assessment is determined by the accumulated capital.

The annuities and pensions that are payable in kind or on the basis of the price of certain products are assessed using the same capital, on the basis of an estimated declaration of the value of the products on the date of the instrument.

3) For the annuities and pensions created with no stated capital, their transfers and redemptions, said value is determined on the basis of a capital made up of twenty (20) times the perpetual annuity and of ten (10) times the lifetime annuity or the pension, regardless of the price stated for the transfer or redemption.

However, where the redemption or commutation of an annuity or pension accumulated without payment of consideration is effected by surrendering a capital which is higher than that made up of twenty (20) times the perpetual annuity and ten (10) times the lifetime annuity or the pension, a gift tax surcharge is payable on the difference between this capital and the value taxed at the time of purchase.

4) Lifetime annuity contracts entered into by life insurance companies are exempted from the registration formality, as well as all instruments, the purpose of which is exclusively the formation, amendment or amicable termination of said contracts.

#### Section 5 - Public procurement contracts

**Art.346.-** (L.F.2024) 1) A duty of 1% is levied on purchase orders and public contracts for which the price is to be paid by the State, local authorities, public establishments, state-owned companies and other assimilated persons. This rate is reduced to 0.5% for contracts with a price of at least 20,000,000,000 CFA francs.

The duty is calculated on the price excluding taxes or on the evaluation of the works, supplies, works or services imposed on the successful tenderer who pays the amount.

2) Where the contractor sub-contracts all or part of their contract and where the primary contract provides for sub-contracting, the sub-contracting agreement must be registered for a fixed duty of ten thousand (10,000) CFA francs.

### Section 6 - Corporate instruments

**Art.347.-** The following are registered free of charge:

1) The instruments of incorporation of companies and economic interest groupings.

However, contributions in return for valuable consideration of real property, going concerns or the right to a lease are subject to the conveyance duty on transfers with valuable consideration that is applicable to the asset contributed.

2) Instruments that provide for extension of existence, an increase or decrease in capital and winding-up of closed-end investment funds, as well as instruments that record direct investments made in the capital of other companies by closed-end investment funds.

3) Instruments of incorporation or for capital increases of real estate companies, the shareholders of which include the Beninese State, the purpose of which is to improve housing conditions in the Republic of Benin, either by facilitating the construction, purchase or sanitation of low-cost or affordable homes, or by building this housing themselves, with a view to the sale or renting thereof.

4) Hire-purchase or sale instruments for developed property, the price of which does not exceed twenty million (20,000,000) CFA francs excluding tax, that are entered into by natural or legal persons who, with the approval or under the supervision of the administration, specialise in the development of economic and social housing.

Completing the registration formality for the instruments listed above is obligatory within one (1) month, failing which the penalties provided for by Article 493 of this Code will apply.

**Art.348.-** The following must be registered for the fixed duty of ten thousand (10,000) CFA francs:

- 1° instruments for the winding-up of companies or partnerships that do not provide for any transfer of movable property or real property between the shareholders or partners and other persons;
- 2° instruments to extend the existence of companies or partnerships, as well as merger, de-merger and spin-off instruments, regardless of the nature of the spin-offs and the merger method;
- 3° instruments that provide for an increase in capital;
- 4° instruments that provide for assignments of shares or equity interests.

### Section 7 - Judicial instruments - Judgments

**Art.349.-** 1) Orders of all types, judgments, arbitral awards, and decisions, including Supreme Court decisions, are liable to a duty of 5% on the amounts awarded.

2) However:

- a) judgments or decisions that are handed down on labour matters and that include an award are liable to a 4% registration duty on the amount awarded;
- b) judgments or decisions that set the amount of a coercive penalty are, however, liable to a 25% duty on the amount to be collected.

3) Where proportional duty was paid on a judgment handed down by default, duty will only be levied on the *inter partes* judgment that may be handed down, to the extent of the additional amounts awarded; the same applies to judgments and decisions that are rendered following an appeal.

4) Proportional duty is not chargeable on judgments, arbitral awards and decisions that order the payment of alimony.

**Art.350.-** 1) The following are registered free of charge:

- a) appeals on the ground of misuse of authority or to contest validity that are brought before the Supreme Court against decisions by the various administrative authorities;
- b) judgments and decisions concerning minor criminal offences, criminal misdemeanours or felonies.
- c) court decisions handed down on commercial matters that include an order to pay, the amount of which is less than or equal to five million (5,000,000) CFA francs;
- d) judgments and decisions that are favourable to the State and to the local authorities, as well as those that order them to pay the costs of the proceedings, regardless of whether they are registered at the request of the State, the local authority or the successful party. The decision is, however, not deemed to be registered with regard to the party that is ordered to pay the costs of the proceedings, against which action must be taken for the payment of the duties.

2) Judgments, orders or decisions concerning non-contentious or civil matters are registered for the fixed duty of five thousand (5,000) CFA francs:

- a) judgments handed down on interlocutory applications during proceedings and on the objections provided for in Articles 164 et seq. of the Code of Civil Procedure;
- b) orders, interim judgments or non-conciliation judgments;
- c) orders, judgments or decisions that appoint expert witnesses, where they cannot give rise to the proportional duty or where they give rise to duty of less than five thousand (5,000) CFA francs;
- d) orders and decisions that set the bond required for release on bail;
- e) decisions in response to appeals against orders of all types, where they cannot give rise to the proportional duty or where they give rise to duty of less than five thousand (5,000) CFA francs.

3) The following are registered for the fixed duty of fifteen thousand (15,000) CFA francs:

- a) criminal misdemeanour judgments and judgments in the first and final instance, which contain definitive provisions that cannot give rise to the proportional duty or that give rise to less than fifteen thousand (15,000) CFA francs of proportional duty;
- a) felony judgments and decisions of the courts of appeal that contain definitive provisions, which cannot give rise to the proportional duty or which give rise to less than fifteen thousand (15,000) CFA francs of proportional duty;
- c) decisions on judgments concerning non-contentious matters;
- d) decisions of the Supreme Court;
- e) judgments or decisions handed down on labour matters with no award.

4) Judgments or decisions concerning property law are registered for the fixed duty of twenty thousand (20,000) CFA francs:

5) Divorce judgments in the first instance are registered for a fixed duty of forty thousand (40,000) CFA francs.

6) Appeal court decisions that order a divorce are registered for a fixed duty of seventy thousand (70,000) CFA francs.

**Art.351.-** The following are exempted from the registration formality:

- 1° judgments and decisions:
  - handed down concerning labour law matters, wage or salary garnishments, occupational accidents and occupational illnesses;
  - regarding the civil status of individuals;
  - concerning the application of the regulations on family benefits;
  - concerning electoral registrations and processes;
  - pursuant to the regulations on the organisation of insolvency proceedings for the settlement of liabilities;
  - concerning the functioning of the Constitutional Court and the Court of Audit;
  - for property law matters;
  - made pursuant to the laws that govern military conscription and exclusively concerning the payment of the allowance;
  - concerning the sectioning of persons for mental health reasons;
  - concerning the correction of the information contained in criminal records;
  - handed down in favour of the State, which make the State a creditor or that ordered confiscations of property for the benefit of the State;
  - that authorise the sale by public auction of properties abandoned by persons in units of the Republican Police, the fire department or in other State structures;
- 2° orders for conciliation, striking cases from the docket, the joinder of cases, the severance of cases or that rule on procedural objections, in accordance with the provisions of Article 755 of the Code of Civil Procedure;
- 3° with the exception of judgments and orders, all procedural documents for criminal law matters, on the sole condition that they were drawn up at the request of the public prosecutor and are not the responsibility of a party claiming damages;
- 4° procedural documents served by one lawyer on another before all types of courts, as well as the records of service of said same documents;
- 5° documents and exhibits concerning the recovery of taxes, duties and charges levied for the benefit of the State or local authorities;
- 6° instruments drawn up pursuant to the legislation on damage caused to private property by the execution of public works, as well as expropriation in the public interest;
- 7° writs, summonses and notices to witnesses, accused persons or defendants signed by the criminal justice department, which are delivered by the Republican Police or by any officer of the defence and security forces;
- 8° the procedure for rehabilitation of victims of bankruptcy, provided for by Articles 204 to 206 and 208 to 213 of the OHADA Uniform Act on bankruptcy procedures to clear liabilities.

**Art.352.-** 1) Court judgments concerning public or local taxes and other amounts owed to the State or other public authorities are subject to the same registration duties as those handed down between private individuals.

For the purposes of recovery, actions, proceedings and the limitation period, the registration duties assessed by revenue agents are treated in the same way as the principal amount awarded by the judgment.

2) Arbitral awards, agreements reached during legal proceedings, during or after an independent evaluation or arbitration, will trigger the duties provided for by the preceding articles for judgments and decisions, depending on the level of the court to which the dispute is referred or that normally has jurisdiction over the case, either in the first instance, or in the final instance.

### Section 8 - Miscellaneous instruments

**Art.353.-** The following are registered for the fixed duty of two thousand five hundred (2,500) CFA francs:

1) Instruments that do not have to be registered pursuant to this Code, but which are submitted voluntarily for the formality by the parties.

2) Certificates of title.

3) Outright acceptances and refusals of estates, bequests or community property.

4) All instruments and contracts that are exclusively related to the licensing by the author or the representatives of the right to display or perform publicly a literary or artistic work.

5) Inventories of furniture, household effects, deeds and documents, as well as estate inventory deeds. A duty is payable for each work session by a legal professional.

6) Instruments drawn up by bailiffs and other persons who have the power to serve writs and draw up official reports, which do not contain any provisions that could give rise to the proportional duty.

7) Valuations of movable property.

8) Wills and other gift deeds which only contain provisions that are contingent on the death of the testator or donor.

**Art.354.-** (L.F.2023) 1) Direct commitments, as well as all commitments by signature are registered free of charge.

2) The following are exempt from the registration formality:

- loan contracts signed in the context of micro-credit activities, the amount of which is less than two million (2,000,000) CFA francs;
- contracts for teaching assignments in public universities.

## Chapter 4 - Filing and payment

### Section 1 - Time-limits for registration

**Art.355.-** 1) Instruments that are subject to the formality of registration must be registered within a time-limit of one month.

For instruments drawn up by *notaires* that have more than one date, the time-limit starts to run from the date on which the agreement is consummated with regard to the co-contracting parties.

For public procurement contracts, the time-limit starts to run from the date of the contract notification.

2) By way of derogation from the provisions of paragraph 1 above, the following must be registered within a time-limit:

- a) of fifteen (15) days as from the date of the signature thereof: instruments prepared by bailiffs and other law officers who have the power to serve writs and draw up official reports;
- b) of two (2) months as from the date of the signature thereof: instruments entered into outside of national territory, registration of which is mandatory;
- c) of three (3) months following the death of the testators, for wills filed with *notaires* or witnessed by them;
- d) of six (6) months after the date of death, for estate transfers. This time-limit is increased to one year when the death occurs outside of national territory.

3) The date of the starting point of the time-limit is not counted.

**Art.356.-** If there are no instruments, transfers in return for valuable consideration and leases must, within one month of entry into possession, be the subject of detailed estimated declarations, on the basis of which the duties will be calculated.

### Section 2 - Relevant tax office

**Art.357.-** 1) Instruments must be registered with the relevant tax office for the person who effects the registration, in particular for *notaires*, court registrars and bailiffs.

Bailiffs may also have their instruments registered with the tax office for the location where they were drawn up.

2) However, the formality must be carried out:

- a) for instruments that provide for the conveyance of real property, rights in rem in immovable property, the right to a lease or going concerns, at the tax office within the territorial jurisdiction of which the property is located;
- b) for instruments of incorporation or modification of companies/partnerships, as well as instruments that provide for the transfer of equity interests, with the relevant tax office for the company or partnership;
- c) for private instruments other than those referred to in sections (a) and (b), with the relevant tax office for the domicile of one of the parties to the contract;



- d) for formal records of public sales of movable property, with the relevant tax office to which the preliminary declaration referred to in Article 381 of this Code was returned;
- e) for estate transfers, with the relevant tax office for the domicile of the deceased, regardless of the location of the movable or real property to be declared. If there is no domicile in the Republic of Benin, the declaration must be made to the relevant tax office for the location of the death or, if the death did not occur in the Republic of Benin, in a Cotonou tax office;
- f) for instruments entered into abroad, in all tax offices, without distinction.

3) Wills that are made outside of the Republic of Benin can only be executed on property located on national territory after being registered with the relevant tax office for the testator's domicile, if they retained one, or with the relevant tax office for their last domicile in the Republic of Benin.

**Art.358.-** In the event that the will contains provisions concerning real property that is located in the Republic of Benin, it must also be registered with the relevant tax office for the location of said real property; this second registration is free of charge.

### Section 3 - Persons liable for the duties

**Art.359.-** The duties for the instruments to be registered must be paid:

- 1° by *notaires*, for the instruments they witness;
- 2° by bailiffs and other persons who have the power to draw up official instruments and reports, for those instruments and reports under their responsibility;
- 3° by registrars or secretaries for the instruments and judgments handed down and placed on record with the registries and secretariats of the courts;
- 4° by the secretaries of the territorial administration for the instruments of said administrations that are subject to the formality of registration;
- 5° by new owners, for the duties on instruments that bring about a transfer of ownership, usufruct or enjoyment of movable or real property;
- 6° by the parties:
  - for private instruments and those entered into abroad that they are required to have registered;
  - for orders handed down in response to a petition or submission, and certificates that are immediately issued to them by the courts;
  - for instruments and decisions that they obtain from arbitrators, if the arbitrators did not have them registered;
- 7° by heirs and legatees, their guardians and tutors, and the executors of wills, for wills and estate transfers;
- 8° by the donee, for *inter vivos* transfers.

**Art.360.-** 1) The parties are jointly and severally liable with regard to the treasury for the payment of standard duties and also those that are payable on the basis of court judgments or decisions.

2) However, the claimant alone will owe the tax if the judgment or decision dismisses their claim in its entirety.

3) The parties who are ordered to pay the costs of proceedings are also solely liable for the payment of the duties, where the judgment or decision awards an indemnity, periodical payments, an annuity or damages for matters involving accidents.

In this case, the parties who are not ordered to pay the costs of the proceedings may arrange for the registration of decisions, in consideration for the fixed duty provided for the registration of judgments that are not subject to the proportional duty. This fixed duty will be deducted from the duties owed by the parties who are ordered to pay the costs of the proceedings.

The decision thus registered for the fixed duty is deemed to be unregistered with regard to the parties who are ordered to pay the costs of the proceedings, who cannot set aside the decision without paying the additional duties.

**Art.361.-** Public officials who, under Article 359 of this Code, have advanced the registration duties for the parties, may take action to recover payment from them, in accordance with the provisions of the Code of Civil Procedure.

#### Section 4 - Terms of payment

##### Sub-section 1 - Payment in full of duties ahead of time

**Art.362.-** 1) The parties must submit at least two stamped originals and copies for registration: one copy will be retained by the tax office.

For instruments drawn up in a language other than French, a complete and accurate translation must accompany each original and each copy.

No registration duties are payable on excerpts or copies.

2) *Notaires*, bailiffs, and registrars are required, each time that they submit instruments for registration, to file a summary list of said instruments, which they drew up, in two original counterparts.

**Art.363.-** Confirmation of registration may be provided electronically. Where applicable, it will produce the same legal effects as the registration and stamp formality that is carried out using instruments printed on paper.

The rules on the implementation of this provision will be specified by an order of the Finance Minister.

**Art.364.-** 1) Registration duties must be paid in full prior to registration, without prejudice to the possibility of splitting the payments.

2) No one may reduce or defer payment on the pretext of a dispute over the percentage, or for any other reason of any kind, unless they apply for a refund, if applicable.

However, the Finance Minister may, in cases where the State is a party, authorise the completion of the registration formality with deferred payment of the duties. Said Minister may delegate their power to the Director General of Taxes.

**Art.365.-** 1) The tax office may not, under any pretext, defer the registration of instruments and conveyances that are filed during the legal hours of opening to the public, for which the duties have been paid at the rates determined by this Code if, moreover, these instruments and declarations meet the formal requirements laid down in this section.

2) Moreover, they may not suspend or stop the progress of proceedings by retaining instruments or writs. However, if an instrument for which there is no original court record or a writ contains information, the record of which may be relevant for determining the duties payable, the revenue agent has the option of making a copy and arranging for it to be certified as a true copy by the officer who submitted it.

3) In the event of refusal, they may retain the instrument for no more than twenty-four (24) hours in order to obtain a certified copy, at the authority's expense, unless there are grounds for reimbursement.

4) This provision is applicable to private instruments that are submitted for registration.

**Art.366.-** At the time of registration, after payment of the duties, a tax payment receipt must be issued, the contents of which are reiterated on the registered instrument or on the excerpt of the declaration by the new owner.

The revenue agent must state thereon the registration date, the register folio, the number and, in words, the amount of the duties levied.

When the instrument contains several provisions that each confer a specific right, the revenue agent must state a summary of each right in their payment receipt and stipulate therein separately the percentage of each duty levied.

## Sub-section 2 - Splitting of duties

**Art.367.-** 1) The proportional duty that is payable on leases may be split:

- a) if the lease is for a fixed term, into as many payments as there are three-year periods over the term of the lease;
- b) if the lease is renewable tacitly for defined periods, into as many payments as the lease has defined periods. However, if the defined period exceeds three (3) years, splitting into three-year periods may be required for each defined period of the lease.

2) Each payment represents the duty pertaining to the rent and to the charges stipulated for the period to which it applies.

3) The duty pertaining to the first period of the lease is the only duty that must be paid at the time of the registration of the instrument or of the declaration.

The duty pertaining to each subsequent period must be paid within one month of the new period starting, at the initiative of the owner or of the lessee. It is levied on the basis of the rate in force at the start of the new period.

**Art.368.-** 1) The proportional duty that is payable on public procurement contracts will be split automatically:

- a) if the contract is for a fixed term, into as many payments as there are three-year periods over the term of the contract;

- b) if the contract is renewable tacitly for defined periods, into as many payments as there are defined periods. If the defined period exceeds three (3) years, splitting into three-year periods may be required for each defined period of the contract.

2) Each payment represents the duty pertaining to the requirements stipulated for the period to which it applies.

3) The duty pertaining to the first period is the only duty that must be paid at the time of the registration of the instrument.

The duty pertaining to the subsequent periods must be paid within one month of the new period starting, at the initiative of either of the parties. It is levied on the basis of the rate in force at the start of the new period.

**Art.369.-** 1) Where the price of a developed property that is primarily used for housing, i.e., buildings in which at least three-quarters (3/4) of the floorspace is used for housing, has been stipulated as payable in annual instalments, the transfer duty may, at the request of the parties, be levied in several equal fractions, without the number of said fractions being able to exceed that of the annual instalments provided for in the contract, or be higher than six (6).

2) The payment of the first fraction of the duty must be made when the contract is registered. The other fractions will fall due from year to year and must be paid during the quarter that follows the due date for each year, such that the entirety of the duty is paid within five (5) years and three (3) months at the most as from the date of the registration of the contract.

3) In the event that, ahead of time, the purchaser pays the price they owe in full before the complete payment of the duty, the outstanding portion will fall due within three (3) months of the definitive remittance, if this occurs before the maximum time-limit of five (5) years pursuant to the preceding provisions has elapsed.

The entirety of the duty will also fall due immediately if the real property is resold.

4) If the sale is rescinded before complete payment of the duties, the amounts that have been paid or fallen due for more than three (3) months will inure to the benefit of the Treasury; the others will be written off.

The voluntary or judicial rescission of a contract will only trigger the fixed duty on innominate contracts.

5) The benefit of this Article is only granted if it is requested in the instrument itself, which must also provide for a mortgage for the benefit of the administration, with an application for registration at the same time as the registration of the change of ownership. The revenue agent at the registration office who recorded the instrument has the capacity to grant a release of the mortgage thus granted, either after complete payment of the duties, or after payment of those fractions alone that have fallen due.

### Section 5 - Refunds

**Art.370.-** 1) Duties that are duly levied on instruments or contracts that are subsequently revoked or rescinded pursuant to Articles 954 to 958, 1184, 1654 and 1659 of the Civil Code cannot be refunded.

2) In the event of the rescission of a contract due to inadequate consideration or annulment of a sale due to latent defects and, moreover, in all cases where there are grounds for annulment, the duties levied on the annulled, terminated or rescinded instrument can only be refunded if the annulment, termination or rescission was ordered by a judgment or a decision that has become definitive and unappealable.

3) However, in the event of the unilateral termination of a contract by the State, the duties levied may be refunded.

4) The annulment, revocation, termination or rescission that is ordered, for any reason whatsoever, by a judgment or decision, will not give rise to the levying of the proportional duty on transfers.

## Chapter 5 - Obligations of public officials and judicial officers

### Section 1 - General provisions

**Art.371.-** 1) *Notaires*, bailiffs, registrars and other public officials and the administrative authorities cannot arrange for an instrument to be drawn up pursuant to or as a result of an instrument, registration of which is obligatory, append, place on record, or issue excerpts from or copies of said instrument, before it has been registered, if the time-limit for registration has not yet expired.

2) This prohibition does not cover writs and other instruments of this type that are served on parties by means of notices or announcements.

Moreover, registrars at courts for minor criminal offences or misdemeanours may, without incurring the penalty provided for in Article 493 of this Code, serve at the prosecutor's office, before registration, enforceable copies of the instruments placed on record by them, provided that the record of the registration is mentioned on said enforceable copies under the responsibility of the Prosecutor's Office, prior to use.

3) *Notaires* may draw up instruments pursuant to or as a result of instruments for which the registration time-limit has not yet expired, but under the condition that each of said instruments is appended to that in which it is mentioned, that it undergoes the formality of registration at the same time as said instrument and that the *notaires* remain liable personally, not only for the registration and stamp duties, but also for the penalties to which said instrument may find itself subject.

**Art.372.-** With the exception of wills that are filed with *notaires* by testators, it is prohibited for all *notaires* or registrars to place an instrument on record without making a written record of this.

**Art.373.-** Reference must be made, in all enforceable copies of public, civil or judicial instruments that have to be recorded in official records, to the payment receipt for the duties by means of a complete verbatim transcription of said receipt.

A similar reference must be made in the originals of public, civil, judicial or extrajudicial instruments, which are drawn up pursuant to private instruments or entered into outside of the Republic of Benin and that are subject to registration.

**Art.374.-** All instruments that provide for a sub-lease, subrogation, assignment or reassignment of a lease, must contain a verbatim transcription of the registration of the lease that was assigned in whole or in part.

**Art.375.-** Each time that an adverse decision is handed down on a registered instrument, the judgment or the arbitral award must make reference to this and state the amount of the duty paid, the date of payment and the name of the tax office where it was paid. If no such reference is made, and if the instrument is one that is subject to the formality within a specified time-limit, the revenue agent will demand payment of the duty, if the instrument was not registered at said revenue agent's tax office. The interested parties may apply for a refund within the stipulated time-limit if proof is then provided that the instrument on which the judgment was handed down had previously been registered.

**Art.376.-** The tax office can only issue excerpts from registration records in response to an order handed down by the president of the court of first instance, where said excerpts are not requested by one of the contracting parties or their beneficiaries or by a public official or judicial officer.

The preceding provision will no longer be applicable to records that have been closed for more than one hundred (100) years and obligatorily transferred to the archives office of the Republic of Benin.

## Section 2 - Registers of *notaires*, bailiffs, registrars and auctioneers

**Art.377.-** *Notaires*, bailiffs, registrars and auctioneers must keep registers in columns in which they enter the information below, each day, with no gaps or missed lines and in numerical order:

- 1° for *notaires*, all the instruments and contracts they place on record or draw up;
- 2° for bailiffs, all the instruments and writs they serve;
- 3° for registrars, all judgments, orders and decisions they place on record, regardless of whether or not they are subject to the formality of registration;
- 4° for auctioneers, the official records of sales and the instruments drawn up as a result of said sales.

**Art.378.-** 1) Each entry in the register must be numbered, state the date of the instrument, its nature, the surnames and first names of the parties and their domicile, a description of the properties, their location and the price, for instruments that concern ownership, usufruct or use of land, and the details of the registration.

2) The registers of bailiffs must contain four (4) additional columns that state: the cost of each instrument or writ, the cost of service applicable to each instrument, the number of sheets of paper used, both for the copies of the original and for the copies of the documents served, as well as the amount of the stamp duties.

**Art.379.-** 1) The registers must have pages that are indelibly stamped and numbered:

- a) for those of *notaires*, bailiffs and auctioneers, by a judge of the relevant court of first instance for their offices;
- b) for those of registrars, by the president of the lower or appellate court in which they perform their duties;
- c) for auctioneers, but only for the official records of sale and of goods and for the instruments drawn up as a result of said sales.

2) The registers must also be submitted at the latest on the tenth of January, April, July and October, to the relevant tax office, which will sign them and record the number of instruments entered.

### Section 3 - Public sales

**Art.380.-** Furniture, belongings, goods, wood, fruits, crops and all other items of movable property can only be sold at a public auction in the presence of and by public officials who have the capacity to do so.

**Art.381.-** 1) No public official may proceed with a sale by public auction of movable property, without having first made a declaration thereof to the tax office in the jurisdiction of which the sale will take place.

Brokers who carry out public sales of wholesale goods or of items pledged as collateral, under the conditions provided for by Article 56 of the OHADA Uniform Act on guarantees, are subject to the same obligation.

2) The declaration must be drawn up in duplicate, dated and signed by the public official. It must contain the surname(s), first name(s), capacity and domicile of the official, those of the petitioner, those of the person whose movable property is sold, the name of the place where the sale will be held and the date and time when the sale will open. It can only be used for the movable property of the person who is named therein and must be delivered to or reach the tax office at least one clear day before the scheduled date of the sale.

3) The following are exempt from the declaration:

- a) civil servants who hold sales of movable property of the State and of local government authorities;
- b) officials responsible for sales of properties from public officials' estates, from civil servants' estates and from estates managed by the duty guardianship.

**Art.382.-** 1) Each item sold by auction must immediately be recorded in the official report, including the amount in words and figures.

2) Each session must be closed and signed by the public official.

3) Where a sale takes place after an inventory is prepared, this must be mentioned in the official report, along with the date of the inventory, and the name of the *notaire* or bailiff who effected the sale, and the tax payment receipt.

**Chapter 6 - Provisions regarding transfers without valuable consideration**

**Art.383.-** Gifts, bequests and estates are deemed to be transfers without valuable consideration.

Transfers without valuable consideration are subject to the general rules provided for in this Chapter, without prejudice to the application of the specific provisions set out below.

**Section 1 - Basis of assessment****Sub-section 1 - General principles**

**Art.384.-** 1) The value of movable property that is transferred without valuable consideration is determined by a detailed estimated declaration by the parties, with no deduction of expenses other than those listed in Articles 390 et seq. of this Code.

2) For securities of Beninese or foreign companies that are admitted to trading on an official market, the estimate cannot be less than the average stock market price on the date of the transfer.

3) The value of real property that is transferred without valuable consideration is determined on the basis of a detailed estimated declaration by the parties with no deduction of expenses, with the possible exception of those listed in Articles 390 et seq. of this Code.

Nevertheless, if, within the two (2) years that preceded or followed the gift deed, or the starting point for the time-limits to file the declaration of estate, the real property transferred was the subject of a public auction, the duties payable cannot be calculated on an amount that is less than the auction price, plus all the capital expenses, unless proof is provided that the nature of the real property underwent changes in the meantime that are liable to alter the value thereof.

**Art.385.-** 1) For the assessment and payment of inheritance tax, the value of the ownership of movable property is determined, unless there is evidence to the contrary:

- a) by the price expressed in the deeds of sale, if said sale took place publicly within two (2) years of the death;
- b) if there is no deed of sale, by the estimate contained in the inventories drawn up after the death;
- c) absent the bases for valuation defined by sub-paragraphs a) and b), by the parties' detailed estimated declaration; however, the taxable value of the furniture cannot be less than 5% of all the other movable and real property assets of the estate.

2) Regarding jewellery, precious stones, works of art or collectibles, the taxable value cannot be less than 60% of the valuation stipulated in the insurance policies against theft or against fire that are in effect on the date of death and entered into by the deceased, their spouse or their family less than ten (10) years before the passing of the estate to the heirs, unless there is evidence to the contrary. If there are several policies that may be used for the application of the flat rate, this must be calculated over the average of the valuations stated in these policies.



3) The provisions of this Article are not applicable to receivables, annuities, shares, bonds, government securities and other movable property, the value and the valuation method of which are determined by specific provisions.

4) The provisions of paragraphs 1 and 3 of this Article are applicable to the assessment and payment of duties on *inter vivos* transfers without valuable consideration, whenever the movable property transferred is sold within two (2) years of the gift or, concerning jewellery, precious stones, works of art or collectibles, whenever they are insured against theft or against fire on the date of said gift under a policy in effect that was purchased by the donor, their spouse or their family at least ten (10) years beforehand.

## Sub-section 2 - Provisions that are specific to estate transfers

### Paragraph 1 - Presumption of ownership

**Art.386.-** 1) Unless there is evidence to the contrary, all movable or real property, the usufruct of which belonged to the deceased and the bare ownership of which belonged to their presumptive heirs, donees or legatees, even pursuant to a subsequent will, or to intermediaries, from a tax standpoint is deemed to be part of the usufructuary's estate, unless there was a due and proper gift and unless said gift, if it is not recorded in a pre-nuptial agreement, was granted more than three (3) months before the death.

2) The following are deemed to be intermediaries:

- a) the father and mother;
- b) the children and descendants;
- c) the spouse of a person who lacks legal capacity;
- d) the children of either spouse.

3) All claims on this ground are time-barred after five (5) years, as from the passing of the estate to the heirs.

However, if the bare ownership reverts to the heir, to the donee, to the legatee or to the intermediary, from a sale or gift granted to them by the deceased, the property transfer taxes paid by the bare owner, for which proof exists, will be offset against the death tax that is payable on account of the inclusion of the properties in the estate.

**Art.387.-** Unless there is evidence to the contrary, the securities and assets from which the deceased received income or by means of which they effected any forms of transaction less than one year before their death are deemed to be part of the estate.

**Art.388.-** All the securities, cash or valuables that are in the possession of the custodians referred to in Article 398 of this Code and that are recorded in co-owned or joint accounts with joint and several liability, are deemed, for the levying of duties, to belong jointly to the filing parties and to be linked to the estate of each of them, on the basis of equal portions, unless there is evidence to the contrary that can be provided by both the administration and the persons liable for payment, and that result, either from the provisions of the custody contract, or from the instruments provided for by Article 391(2) of this Code.

**Art.389.-** The monies, annuities or emoluments of any kind whatsoever that are owed by an insurer, as a result of or at the time of the death of the insured, will only trigger liability to inheritance tax, according to the degree of kinship that exists between the insured and

the beneficiary of the monies, to the extent that the insurance pay-out is regarded by the law as being part of the estate.

### **Paragraph 2 - Deduction of debts and charges**

**Art.390.-** 1) For the assessment and payment of inheritance tax, the debts for which the deceased was liable, the existence of which on the date of the passing of the estate to the heirs is duly justified by documents that can be used as evidence in court against the deceased, must be deducted.

2) If these are commercial debts, the administration may demand, under penalty of refusal, the disclosure of the deceased's accounts.

3) If a debt is owed by an estate, the bare ownership of which is allocated to one person and the usufruct of which is allocated to another person, the transfer duty will be levied on the estate's assets, minus the amount of the debt.

4) On the basis of supporting documents provided by the heirs, the costs of the deceased's final medical bills and funeral expenses will be deducted from the estate's assets, within the respective limits of one million (1,000,000) CFA francs and five hundred thousand (500,000) CFA francs.

5) The taxes computed after the death of a taxpayer pursuant to the tax regulations of the Republic of Benin, which are owed by the heirs on account of the deceased, constitute a debt that is deductible from the estate's assets.

**Art.391.-** For the assessment and payment of inheritance tax, the following are not deducted:

- 1° debts that matured more than three (3) months before the passing of the estate to the heirs, unless a certificate from the creditor is produced to confirm the existence at that time;
- 2° debts granted by the deceased to their heirs or intermediaries, as referred to in Articles 911 and 1100 of the Civil Code. Nevertheless, where the debt was evidenced by a deed or by a private instrument with an authenticated date before the passing of the estate to the heirs, other than by the death of one of the co-contracting parties, the heirs, donees and legatees, and the persons who are deemed to be intermediaries, have the right to prove the authenticity of this debt and its existence on the date of the passing of the estate to the heirs;
- 3° debts acknowledged by a will, unless they are proved by another means;
- 4° in the event of debts that are guaranteed by a mortgage, if the principal of the guarantee has been reduced, only the guaranteed balance will be deducted, if applicable;
- 5° debts that result from judgments handed down outside of the Republic of Benin, unless they have been made enforceable in that country, including those that are secured exclusively by mortgaged properties located outside of national territory or guaranteed exclusively by going concerns located outside of national territory;
- 6° the principal and interest of debts for which the limitation period has expired, unless proof is provided that the limitation period has been interrupted.

**Art.392.-** 1) Debts, the deduction of which is requested, must be detailed item by item in an inventory on unstamped paper that is filed with the relevant tax office when the estate is declared and certified by the filing party.

2) The inaccuracy of debt declarations or certificates can be established by all forms of evidence that are accepted by ordinary law, except oaths.

**Art.393.-** 1) Debts for which the tax administration deems the evidence to be insufficient are not deductible, unless the parties file a claim, where necessary, within two (2) years of the date of the declaration.

2) All debts that are evidenced by a deed and that have not matured on the date of the passing of the estate to the heirs cannot be set aside by the tax administration until it obtains a judgment that they do not exist in reality.

The limitation period for actions to prove simulated transactions is five (5) years, as from the date of the declaration.

3) Heirs or legatees are permitted within the time-limit of two (2) years, as from the date of the declaration, to claim, subject to the evidence requirements mentioned above, the deduction of the debts established by insolvency or court-ordered liquidation operations or by the definitive payment of proceeds to the creditors after the declaration, and to obtain the reimbursement of any excess duties they paid.

## Section 2 - Rate and assessment of the duties

**Art.394.-** 1) Estate transfers are registered free of charge.

2) *Inter vivos* gifts are subject to a proportional duty of 5%.

Instruments that contain either the declaration by the donee or their representatives, or the judicial recognition of a gift from hand to hand, are subject to gift tax.

3) Gifts and bequests of all types that are granted to red cross associations that are affiliated to the "international red cross" are registered free of charge.

4) Gift taxes are payable by the heirs, donees or legatees. The joint heirs are jointly and severally liable.

**Art.395.-** In support of the registration, the heirs, legatees or donees, their guardians or tutors, are required to draw up and sign a declaration that states the surnames, first names, date and place of birth:

- 1° of each of the heirs, legatees or donees;
- 2° of each of the children of the heirs or legatees who are alive when the estate passes to said heirs or legatees.

## Section 3 - Obligations

**Art.396.-** 1) All purchasers of rights in rem in immovable property or of going concerns located in the Republic of Benin and that are part of an estate, can only pay the purchase price upon presentation of a certificate issued free of charge by the relevant tax office, which confirms either the payment or the non-chargeability of estate tax.

2) Entry in the land records, or in all analogous documents that may be introduced, of instruments or documents that evidence the transfer upon death of rights in rem in immovable property, or registration with the trade registry of the transfer of businesses, is only possible upon presentation of a certificate issued free of charge by the tax office, which confirms either the payment or the non-chargeability of estate tax.

3) Entry in the land records of instruments that evidence the transfer upon death of rights in rem in immovable property, or registration with the trade registry of the transfer of businesses, is only possible upon presentation of a certificate issued free of charge by the relevant tax office, which confirms either the payment or the non-chargeability of inheritance tax.

**Art.397.-** Public officials who have authority to receive civil status documents must provide, in the months of January, April, July and October, to the tax office with territorial jurisdiction, the statements certified by said officials of the death certificates for the past quarter, failing which the penalty provided for in Article 496 of this Code will apply.

In the event that no estate of this kind passed to heirs during a given quarter, a statement to confirm this must be drawn up, within the time-limit defined in the first sub-paragraph of this Article and subject to the same penalty.

**Art.398.-** The public administrations, the establishments or organisations of all types that are under the control of the administrative authority, companies, banks, public officials or judicial officers or business agents who are the custodians, holders or debtors of securities, monies or assets that are linked to an estate they know has passed to the heirs, must send, either before the payment, the remittance or the transfer, or within two weeks following said operations, the list of said securities, monies or assets to the relevant tax office for their residence. A receipt will be issued for this.

## Part 2 - Stamp duties

### Chapter 1 - Scope of application

#### Section 1 - Instruments that are subject to stamp duty

**Art.399.-** Stamp duty is levied on all documents that are intended for civil and judicial instruments and for the submissions that may be produced and be authoritative in court, as well as for the instruments that are listed exhaustively by the law.

**Art.400.-** Stamp duty must be paid on all instruments signed in a foreign State before they can be used in the Republic of Benin, either in a public instrument, or in any form of declaration, or before a judicial or administrative authority.

## Section 2 - Exemptions

**Art.401.-** (L.F.2023) In all cases where the law provides for an exemption from stamp duties, this exemption also entails exemption from the formality of registration, except in the case of discounted tenders and contracts for construction, repairs, maintenance, supplies and provisions, the price of which must be paid by the State, Departments or Municipalities.

**Art.402.-** (L.F.2023) The following are exempted from stamp duty:

- 1) All instruments, orders, decisions and registers of the administrative authorities, with the exception of those referred to in Article 406(7) and (8) of this Code.
- 2) Procedural documents served by one lawyer on another before all types of courts, as well as the records of service of said same documents.
- 3) The reports issued by treasury accountants, and the duplicates, other than those of the accountant, of each specific and private revenue or management account.
- 4) The registers of tax collection officers and other officials.
- 5) The exhibits and instruments concerning formal orders to pay, attachments and sales, the purpose of which is the collection of direct duties and similar taxes.
- 6) Claims of all types filed by taxpayers concerning direct duties and similar taxes.
- 7) The second original counterpart, which is kept by the tax authority, of the declaration referred to in Article 407(2) of this Code that concerns sales by public auction of items of movable property.
- 8) The receipts issued to the registrars, by the registration revenue agent, for the excerpts from judgments that said registrars must provide pursuant to the regulations on registration.
- 9) The registry of entries kept by the registrar pursuant to the regulations on the sale and pledge of going concerns, the registration slips, the filing acknowledgements, the statements, certificates, excerpts and copies drawn up pursuant to said regulations, as well as the instruments produced to secure accomplishment of the formality and that remain filed with the registry, and the copies thereof that are issued, provided that said documents expressly state their purpose.
- 10) The original records of the bailiffs and registrars in which they enter all the instruments, writs, judgments and decisions, which are exempt from stamp duty and registration formalities, as well as the criminal record section n°3 documents they issue.
- 11) The petitions of all kinds that are sent to the established authorities.
- 12) All judicial instruments concerning electoral matters.
- 13) The issuance provided for by the regulations in force:
  - a) of the tonnage certificate;
  - b) of the marine licence;

- c) of the certificate of aptitude for the operation of vessels with a mechanical means of propulsion.
- 14) Certificates of origin of fresh products that are destined for export, which are issued by the administration pursuant to the regulations in force.
- 15) Business accounts.
- 16) The shares and bonds issued by companies.
- 17) Concerning the trade registry and the movable property credit register:
- a) the declarations referred to by the regulations on the trade registry and the public notice formalities required of companies;
  - b) the copies of registration with the trade registry issued pursuant to the law;
  - c) copies of exhibits filed with the commercial court registry, by foreign commercial companies.
- 18) Concerning labour law matters:
- a) the employment or apprenticeship contract, which is regulated by the labour legislation applicable in the Republic of Benin;
  - b) the employment certificates issued to workers, even if they contain provisions other than those stipulated by law, each time that said provisions do not contain an obligation, receipt or any covenant that gives rise to the proportional duty.
- 19) The registers and passbooks for use by savings banks.
- 20) Insurance contracts.
- 21) For property matters:
- a) documents that are specifically drawn up with a view to application for entry in the land records (multiple originals of a private instrument, enforceable copy of instruments drawn up by *notaires* or the courts, copies of writs, with the exception, however, of original court records and copies of public documents and originals of writs);
  - b) documents that are specifically drawn up in order to be submitted in support of a request for registration;
  - c) the registers and records of all kinds that are kept in land records offices;
  - d) receipts for filing issued to applicants, and the statements, certificates, excerpts and copies drawn up by land registrars, with the exception, however, of instruments issued to private individuals, on which stamp duty must be paid.
- 22) The instruments referred to in Article 347(3) and (4), and Article 351 of this Code.
- 23) Loan contracts signed in the context of micro-credit activities for amounts of less than two million (2,000,000) CFA francs.
- 24) Discounted tenders and contracts for construction, repairs, maintenance, supplies and materials, the price of which must be paid by the State, Departments or Municipalities.

### Section 3 - Persons liable for payment

**Art.403.-** The stamp duty on all instruments entered into by the Beninese State and citizens must be paid by said citizens.

**Art.404.-** The following are jointly and severally liable for the payment of stamp duties and penalties:

- 1° all the signatories, for agreements involving reciprocal obligations;
- 2° lenders and borrowers, for obligations;
- 3° judicial officers who have placed on record or drawn up instruments that set out documents or registers on which stamp duty has not been paid.

## Chapter 2 - Computation of stamp duties

**Art.405.-** No less than fifty (50) CFA francs can be levied in the event that the application of stamp duty rates does not generate this amount.

### Section 1 - Per page stamp duty

#### Sub-section 1 - Scope of application

**Art.406.-** The following are subject to the per page stamp duty:

- 1) Instruments drawn up by *notaires*, excerpts therefrom and the copies and enforceable copies thereof that are issued.
- 2) Those drawn up by bailiffs and other persons who have the power to serve writs, and the copies and enforceable copies thereof that are issued.
- 3) Documents and reports drawn up by law enforcement officers and by all other employees or officers who have the right to make official reports of offences.
- 4) The instruments, judgments and decisions of lower courts, upper courts and arbitrators, and the copies and enforceable copies thereof that are issued.
- 5) Specific decisions handed down by judges and those that are placed on record at registries or by registrars, as well as the excerpts therefrom, and copies and enforceable copies thereof that they issue.
- 6) Instruments drawn up by the established administrative authorities that are subject to registration or that are issued to citizens, and all enforceable copies of and excerpts from the instruments, orders and decisions of said authorities, that are issued to citizens.
- 7) Instruments drawn up by the administrative authorities and state-owned enterprises, which confer transfer of ownership, usufruct and enjoyment.

The only instruments for which a record must be kept on stamped paper in local administrative offices are those listed in this paragraph.

8) All instruments and documents, excerpts, copies and enforceable copies, either public or private, which must or can be made into orders or produced on account of an obligation, release, proof, claim or rebuttal.

9) The registers:

- a) of the judicial authority in which instruments are written that are subject to registration on the basis of the original court records, and the records of registrars concerning civil and commercial matters;
- b) of the regional and municipal administrations that are kept for purposes that are specific to them and that have no connection whatsoever with general administration, and the records of their secretaries;
- c) of the *notaires*, bailiffs and other public officials and judicial officers, and their records in which they enter all the instruments, writs, judgments and orders that are subject to the formality of registration;
- d) of joint-stock companies;
- e) of business agents, directors, clerks, receivership committees and contractors for works and supplies.

10) All ledgers, registers and original records of letters that may be produced in court as authentic evidence, as well as the excerpts, copies and enforceable copies that are issued of said ledgers and registers.

11) Instruments that are subject to registration duties pursuant to Articles 318 et seq. and not expressly exempted.

**Art.407.-** The following are also subject to per page stamp duty:

1) Enforceable copies that are intended for the parties to orders for the appointment of *notaires*, lawyers, registrars, bailiffs, brokers and auctioneers.

2) One of the two original counterparts of the declaration that all public officials must file with the tax office before carrying out a sale by public auction of movable property; the counterpart subject to stamp duty is that which will be appended to the official report of the sale.

3) Appeals lodged by taxpayers with the administrative courts concerning direct and similar taxes.

4) Mandates for claims filed or defended for a third party concerning tax matters.

5) Appeals against administrative court judgments handed down on tax-related claims.

6) Powers of attorney granted by the attaching creditor pursuant to the provisions set forth in the Labour Code concerning amounts withheld from wages and salaries.

7) Certificates for non-marketable units in mutual guarantee companies, the organisational documents and functioning of which are acknowledged in accordance with the provisions of the law in force.

8) Appeals on grounds of misuse of authority before the administrative courts against instruments drawn up by the administrative authorities.



9) Appeals lodged with the administrative courts against decisions that refuse or award pensions and decisions concerning entitlement to pension annuities, as well as appeals before the Supreme Court against judgments by the administrative courts handed down regarding such matters.

**Art.408.-** Photocopies and all other reproductions obtained using photographic media, which are produced to serve as enforceable copies, excerpts or copies that meet the criteria provided for by Article 411 below, are subject to a stamp duty equal to that levied on reproduced written instruments.

**Art.409.-** The instruments not expressly referred to in this section may be subject to stamp duty upon voluntary presentation.

### Sub-section 2 - Rate

**Art.410.-** The rate of the stamp duty is set at one thousand two hundred (1,200) CFA francs, regardless of the length of the document.

However, an order of the Finance Minister will set the specific rate that is applicable to the standard by-laws of companies that are in the process of incorporation.

### Sub-section 3 - Levying method

**Art.411.-** 1) Stamps must be affixed to the first page of each sheet and cancelled in accordance with the general rules laid down by Article 443 below.

2) The stamps on copies of writs and service documents of all court decisions must be paid by being affixed by the judicial officer prior to service, in the left-hand margin of the first page of the original.

The copies of the writs, and those of the service documents of all judgments, instruments or documents must be accurate, legible and free of abbreviations.

**Art.412.-** Independently of the information required by the Code of Civil Procedure, bailiffs are required to state separately at the foot of the original and of the copies of each document for service:

- 1° the number of sheets of paper used both for copies of the original and for copies of the documents served;
- 2° the amount of the stamp duties.

## Section 2 - Proportional stamp duty on notes

### Sub-section 1 - Notes subject to stamp duty

**Art.413.-** 1) The following are subject to the stamp duty:

- a) promissory notes or bearer notes, warrants and all other negotiable instruments or commercial papers, and even the second of exchange, third of exchange and duplicate of bills of exchange drawn in a set;

- b) non-negotiable notes and debentures, time drafts and trade acceptances are subject to proportional stamp duty, as is the case for promissory notes, bills of exchange and other negotiable instruments;
  - c) notes, debentures, orders to pay and all non-negotiable drafts, irrespective, moreover, of their form or title, that are used to obtain remittance of money between places of trade;
  - d) warrants and agricultural warrants.
- 2) Stamp duty is applicable to notes:
- a) that are executed in the Republic of Benin and payable outside of national territory, and vice versa;
  - b) drawn from one foreign country on another foreign country, which are accepted or settled in the Republic of Benin.

**Art.414.-** 1) The second, third and fourth of exchange of bills of exchange drawn in a set may, despite being written on unstamped paper, be presented to registration officers in the event of a protest for non-acceptance, with no requirement to pay stamp duty or a penalty, provided that the first of exchange written on paper subject to proportional stamp duty is submitted to the registration revenue agent at the same time.

2) However, if the first of exchange bearing a stamp or certificate of payment is not attached to the bill from the set that is placed in circulation for the purpose of endorsement, the stamp or certificate of payment must still be affixed to the latter, failing which the penalties stipulated in this Code will apply.

### Sub-section 2 - Rate

**Art.415.-** The rate of the proportional stamp duty on notes is set at 1 CFA franc per mil or fraction of a mil.

### Sub-section 3 - Terms of payment

**Art.416.-** The stamp duty on notes is levied by the affixing of adhesive revenue stamps.

It may be paid by means of stamping machines under the conditions defined by a regulation.

**Art.417.-** 1) The stamps must be affixed:

- a) on notes created in the Republic of Benin, when they are established,
- b) on notes from other countries that are payable in the Republic of Benin, at the time of acceptance or guarantee, or in the absence of acceptance or guarantee, at the time of the first endorsement in the Republic of Benin or at the time of discharge.

2) Each adhesive stamp must be cancelled immediately upon being affixed:

- a) by the drawer, for notes established in the Republic of Benin;
- b) by the signature of the acceptance or the guarantee, of the endorsement or the discharge, for notes established outside of national territory.

**Art.418.-** 1) Cancellation consists of writing the information below in ink on the adhesive stamp, under the conditions stipulated in the preceding article:

- a) the place where the cancellation is effected;

- b) the date on which the cancellation is effected;
- c) the signature, as specified in the preceding article, of the signatory of the note, of the acceptance, of the guarantee, of the endorsement or of the discharge.

2) In the event of a protest for non-acceptance of a note established outside of national territory, the stamps must be affixed and cancelled by the bearer before the presentation of the protest for registration.

3) Taxpayers may, for the cancellation, use a printed signature or a stamp impressed using tacky ink.

**Art.419.-** 1) The date and the signature, in the event of handwritten cancellation, must be impressed on two separate lines, both of which extend onto the sheet of paper, on either side of the adhesive stamp. The cancellation by means of a printed signature must also appear in part on the stamp and in part on the paper.

2) Where the tax is paid by means of several adhesive revenue stamps, each of the stamps must be affixed individually and separated from the others by a sufficient margin to enable each of them to be duly cancelled in a manner that is completely separate from the cancellation of the adjacent stamps.

**Art.420.-** 1) The person who receives an unstamped note from the drawer is required to have it stamped with a certificate of payment within fifteen (15) days of its date or before being drawn, if the note was dated less than fifteen (15) days beforehand and, in all cases, before any negotiation. This certificate of payment is subject to a duty increased to three times that which would have been payable if it had been paid normally, plus the amount of the note, notwithstanding any provisions to the contrary.

2) The bearer of a bill of exchange on which stamp duty has not been paid or without a certificate of payment cannot, until the stamp duties and penalties incurred have been paid, exercise the remedies that are granted to them by the law against the drawer, the endorsers and the other obligors. The exercise of the remedies that are available to the bearer of any other note that is subject to stamp duty that has not been stamped or that does not bear a certificate of payment is also suspended until the payment of the stamp duties and penalties incurred.

All provisions to the contrary are null and void.

**Art.421.-** It is prohibited for all persons, all companies and all public institutions to cash or arrange for the cashing, in their own right or on behalf of a third party, even without the discharge thereof, of bills of exchange or all the other notes referred to in Article 413 of this Code on which stamp duty has not been paid or that do not bear a certificate of payment.

**Art.422.-** All provisions or agreements for return at no cost, either on the bill or separately from bill, are invalid, if they concern bills on which stamp duty has not been paid or that do not bear a certificate of payment.

### Section 3 - Stamp duty on receipt of payment

**Art.423.-** 1) The stamp duty on receipt of payment applies to:

- a) documents that contain a straightforward receipt, discharge or declaration of securities, valuables or property;
- b) receipts that evidence a deposit of cash in a bank, in a financial institution, with a securities broker, or a farm credit institution.

2) The amount of the duty is set at one hundred (100) CFA francs per receipt.

3) The stamp duty on receipt of payment is paid either by affixing an adhesive stamp, or on the basis of a monthly statement.

In the event of payment on the basis of a statement, the papers and receipts must bear the words "Stamp duties paid through an account with the General Tax Directorate" printed in clear type.

## Section 4 - Stamp duty on documents

### Sub-section 1 - Identity cards - Passports

**Art.424.-** When they are issued or renewed, identity cards are subject to stamp duty of three hundred (300) CFA francs.

**Art.425.-** When they are issued or renewed, ordinary passports issued by the Republic of Benin are subject to stamp duty of six hundred (600) CFA francs.

Passports issued to civil servants undertaking missions abroad are exempted from the payment of this stamp duty.

**Art.426.-** 1) Visas are subject to a fixed stamp duty as follows:

- residence or transit visa (layover of less than 48 hours): free
- special tourist visa (0 to 8 days): free
- residence visa up to one month: XOF 2,000
- residence visa up to three (3) months: XOF 5,000
- residence visa up to six (6) months: XOF 10,000
- residence visa up to one year: XOF 20,000

2) The following are exempted from the stamp duty on visas:

- a) members of religious communities who devote themselves to aid or charity work;
- b) foreign nationals who work for the State Department of the Republic of Benin, their spouse and their direct ascendants or descendants.
- c) diplomats and international civil servants.

Specific reference to the lack of a charge must be mentioned on the passport by the department that is responsible for issuing the visa, with a precise statement of the reason for exemption, or of the number of this paragraph that was applied.

**Art.427.-** Resident's cards are subject to stamp duty as follows:

- temporary residence permit (1 year): XOF 20,000
- ordinary residence permit (3 years): XOF 30,000
- privileged residence permit (10 years): XOF 50,000

**Art.428.-** The duties referred to in this sub-section are paid on the basis of monthly statements by the authorities concerned.

### **Sub-section 2 - Stamp duty on contracts of carriage**

**Art.429.-** 1) Contracts for the carriage of goods by air are subject to a stamp duty of one thousand (1,000) CFA francs.

2) Maritime bills of lading are subject to a stamp duty of three thousand (3,000) CFA francs.

3) Maritime or air carriage companies must pay the above stamp duties on the basis of monthly statements and are required to pay over the amount to the General Tax Directorate at the latest on the tenth of the month which follows that during which the transactions were effected.

4) Contracts for the carriage for goods by air and maritime bills of lading must bear the words "Stamp duties paid through an account with the General Tax Directorate" printed in clear type.

### **Sub-section 3 - Motor vehicles**

#### ***Paragraph 1 - International permits and certificates***

**Art.430.-** 1) The issuance fee or extension fee for the validity of international certificates for automobiles and international driving licences referred by the international treaties is defined as follows:

- a) request for an international permit:
  - XOF 1,000 of stamp duty;
  - XOF 1,000 of issuance fee;
- b) request for an international certificate:
  - XOF 1,000 of stamp duty;
  - XOF 1,000 of issuance fee.

2) This duty is paid by the authority that is responsible for the issuance or renewal of these documents affixing adhesive revenue stamps from the standard sheet.

The stamps must be affixed, at the time of issue, to page 1 of the certificate or of the licence and, if the validity is extended, to the margin of each renewal reference. In both cases, the stamps must be immediately cancelled by the authority that issues the document, under the conditions defined in Article 443 of this Code.

3) The delivery or return of the certificate to the holder cannot take place under any circumstances before the affixing and cancellation of the stamps has been completed.

#### ***Paragraph 2 - Registration papers***

**Art.431.-** 1) The receipts for declarations of the entry into service of automotive vehicles and of all other motor vehicles and trailers (registration papers) trigger the payment of a tax, the amount of which is established as follows:

- a) light vehicles and motorcycles (mopeds, small motorcycles and scooters) with a capacity of 50 cm<sup>3</sup> or less, where these vehicles must be registered pursuant to the Highway Code or the regulations enacted for the application thereof: XOF 1,000;
- b) motor vehicles:
  - the power rating of which for tax purposes is less than or equal to 7 CV: XOF 5,000;
  - the power rating of which for tax purposes is between 7 and 15 CV: XOF 10,000;
  - the power rating of which for tax purposes exceeds 15 CV: XOF 15,000;
- c) agricultural trailers and tractors: XOF 2,000;
- d) trailers or semi-trailers:
  - the payload of which does not exceed 2,500 kg: XOF 10,000;
  - the payload of which exceeds 2,500 kg: XOF 20,000;
- e) special public works or handling machinery: XOF 20,000.

2) In the event of loss, the issuance of a duplicate receipt is contingent on the payment of an amount equal to one-half of the duties provided for above.

3) The duty is set at one thousand (1,000) CFA francs:

- a) in the event of an exchange of damaged registration papers; this duty is reduced to five hundred (500) CFA francs for category A vehicles;
- b) for the original receipt issued in the event of a change of address, change of civil status or mere change of corporate name, with no creation of a new legal entity or change in the natural or legal person who is the owner of the vehicle. In the event of a change of address, the modification must be made within one month.

**Art.432.-** The issuance of registration papers for the provisional registration of a motor vehicle that has just left the factory, dealership or bonded warehouses in order to be driven by the purchaser to their place of residence, outside of the Republic of Benin, with a view to the registration of that vehicle, will cause a duty of five thousand (5,000) CFA francs to be levied.

The issuance of papers for the registration or provisional registration of a vehicle with temporary exemption from customs duties or a vehicle that belongs to a consular officer and that benefits from temporary exemption from customs duties, will cause a duty of two thousand (2,000) CFA francs to be levied.

**Art.433.-** The registration papers for vehicles that belong to the Beninese State are exempt from the duties provided for above.

**Art.434.-** The taxes provided for in Articles 431 and 432 above will be levied by affixing, on the document issued to the person liable for the tax or otherwise on the application made, revenue stamps cancelled by the authorities responsible for ground transportation under the conditions defined in Article 443 of this Code.

### **Paragraph 3 - Technical inspections**

**Art.435.-** 1) A tax of two thousand (2,000) CFA francs will be levied at the time of the technical inspection of transport vehicles; it is paid by affixing adhesive revenue stamps cancelled by the National Road Safety Centre under the conditions defined in Article 443 of this Code on the official inspection report.

2) For vehicles used for the public transport of passengers and goods, in addition to the stamp duty, it is necessary to present a receipt to the national structure responsible for the

technical inspection to prove payment of the composite business tax in respect of the current year, before carrying out the technical inspection, under penalty of refusal.

#### **Paragraph 4 - Vehicle lien**

**Art.436.-** Reference to a lien for the sale on credit of a motor vehicle, to a release or to clearance will require an adhesive revenue stamp of one thousand five hundred (1,500) CFA francs to be affixed, which will be cancelled by the authority that holds the lien records, under the conditions defined in Article 443 of this Code.

The certificate of lien or title clearance certificate will require the payment of per page stamp duty.

#### **Paragraph 5 - Authorisation to provide public transport services ("yellow card")**

**Art.437.-** 1) The issuance fee for authorisation for entry into service of a passenger vehicle for public transport or combined private and public transport ("yellow card") is set at one thousand (1,000) CFA francs.

2) The same duty of one thousand (1,000) CFA francs is applicable for:

- a) the authorisation for placing a taxi in service;
- b) the authorisation for the public transportation of goods;
- c) the issuance of a duplicate, if the original is lost;
- d) the exchange of a damaged yellow card.

#### **Paragraph 6 - Driving licence**

**Art.438.-** Requests for a driving test are subject to stamp duties and test fees, which are set as follows:

1) Driving licence:

- a) vehicles in category AI (mopeds, the capacity of which does not exceed 50 cc):
  - XOF 2,000 of stamp duty;
  - XOF 1,000 of test fee;
- b) vehicles in category A and B:
  - XOF 2,000 of stamp duty;
  - XOF 3,000 of test fee;
- c) vehicles in categories C and D:
  - XOF 2,000 of stamp duty;
  - XOF 4,000 of test fee;
- d) vehicles in category E:
  - XOF 2,000 of test fee.

2) Requests for duplicate driving licences and requests to exchange damaged licences or to convert military licences into a civilian licence:

- a) request for a duplicate driving licence:
  - XOF 2,000 of stamp duty;
  - XOF 1,000 of renewal fee;
- d) request for replacement of a damaged licence:
  - XOF 2,000 of stamp duty;
  - XOF 1,000 of renewal fee;
- c) request to convert a military licence into a civilian licence:

- XOF 2,000 of stamp duty;
- XOF 1,000 of conversion fee.

3) Authorisation to drive "taxi" vehicles, which must be renewed annually:

- XOF 1,000 of stamp duty;
- XOF 1,000 of issuance fee.

4) The duties stipulated for categories A, B, C and D, as applicable, are levied under the same conditions for all requests for extensions of driving licences.

The duties provided for in this article are levied by means of adhesive revenue stamps affixed to the application for the licence, licence extension or conversion of a military licence and cancelled by the technical department under the conditions defined by Article 443 of this Code.

The licence to operate a trailer and the conversion of a military licence into a civilian licence only require the payment of per page stamp duty.

#### **Sub-section 4 - Criminal record section n°3**

**Art.439.-** 1) Criminal record section n°3 that is issued to the person it concerns is subject to a stamp duty of three hundred and seventy-five (375) CFA francs.

2) This duty is levied by the registrars when said records are issued to the persons who request them.

3) The duty is collected by stamping the following words on the upper left corner of the document: "Stamp duty of three hundred and seventy-five (375) CFA francs levied by the General Tax Directorate", and stating the number under which this record is entered in the specific file provided for by Article 377 of this Code.

#### **Sub-section 5 - Hunting licence**

**Art.440.-** Hunting licences are subject to stamp duty under the conditions determined by regulations.

### **Chapter 3 - Payment**

**Art.441.-** 1) In the various cases where, for tax matters, payment is certified by affixing or impressing stamps, stickers or markings, the administration may, under the conditions defined by this Chapter, authorise the persons responsible for payment to pay duties on the basis of statements or using a flat-rate system, or to substitute the aforementioned stamps, stickers or markings with stamps that are printed using special stamping machines that the administration approved beforehand.

2) Revenue stamps may be printed and paid digitally, in accordance with the rules stipulated by a regulation.



### Section 1 - Standard revenue stamps

**Art.442.-** 1) A single model of adhesive stamp is created for the payment of stamp duties.

2) The set of single revenue stamps printed on the stickers will comprise stamps of 50, 100, 200, 250, 350, 500, 1,000, 2,000, 5,000, 10,000, 20,000 and 30,000 CFA francs.

This list may be modified by an order of the Finance Minister, in the event that there are grounds to provide for new quantities that correspond to new taxes or a modification of the rates of the existing taxes.

3) In addition to their value, the stickers bear the words "revenue stamp" and "Republic of Benin".

4) At the request of the Director General of Taxes, each new sticker that is brought into service must be registered, at no cost, with the registries of all courts that have jurisdiction as to substance.

### Section 2 - Methods for cancelling revenue stamps

**Art.443.-** 1) In the event that the use of adhesive revenue stamps is authorised by this Code, they must be cancelled at the time of use by being signed in ink, across the stamp, by the taxpayers or by any one of the taxpayers; the date and place of cancellation must also be written.

2) This signature may be replaced by a printed signature or stamp impressed using tacky ink, which states the name or corporate name of the taxpayer, the date and the place of cancellation.

3) The stamps must be cancelled in such a way that part of the signature and of the date or of the stamp appears on the adhesive stamp and part on the paper to which the stamp is affixed.

4) In the event that certain taxes are paid by the affixing of stamps, they must be cancelled by the authority that is responsible for issuing the documents under the conditions provided for in this article.

**Art.444.-** Instruments or documents on which the adhesive stamp has been affixed or cancelled after use or without fulfilling the conditions stipulated or to which a previously used stamp has been affixed will be regarded as unstamped.

### Section 3 - Stamp duty paid on the basis of statements

**Art.445.-** 1) All natural or legal persons who wish to pay certain stamp duties on the basis of statements, other than in the cases provided for in this Code, must submit a request to this end to the Director General of Taxes.

2) This request must include a commitment to comply with the conditions set forth in Articles 446 to 449 of this Code, unless one of the exemptions provided for in this Chapter applies.

3) Where authorisation is granted, the holder of this authorisation will levy, under their responsibility and at their risk and jeopardy, the stamp duties that are chargeable in accordance with the authorisation.

**Art.446.-** The documents issued must bear the words "Stamp duty paid on the basis of statements. Authorisation of ... (date of the authorisation)".

**Art.447.-** 1) The amount of the chargeable duties must be paid at the end of each month and at the latest on the tenth of the following month, to the tax office that is designated for this purpose.

2) Absent payment of the duties within the time-limits and in the manner stipulated above, the recovery will be enforced against the trader or the manufacturer in the same way as for stamp duty.

**Art.448.-** 1) In support of the payment, the authorised person who is responsible for the payment must provide a statement that shows, separately and where necessary, for each establishment, agency or branch, the number of documents or instruments that are respectively liable to the stamp duty at each of the rates defined by this Code.

2) This statement must be certified as accurate regarding the accounts of the trader or manufacturer and the amount of the stamp duties will be provisionally assessed and paid as a result thereof. It must be provided in duplicate in support of each monthly payment. One of these duplicates will be returned to the filing party bearing a receipt stamp from the registration revenue agent, the other will be kept at the tax office to be used as a basis for the collection of the stamp duties.

3) If, following verifications by the trader or manufacturer, errors or omissions are acknowledged, the duties pertaining to said errors or omissions must be listed on a specific statement that is drawn up in duplicate and shows the amounts that were overpaid or underpaid. This statement must be provided with the statement for the month during which said errors or omissions were identified.

**Art.449.-** 1) The interested party must open a specific column in their accounts for the entry of the amount of the stamp duty levied for each document or instrument.

2) The duties must be totalled on the slip or statement and the total itself then recognised in the revenue ledgers in order to facilitate audit operations.

3) The administration reserves the right, at any time, to revoke the authorisations granted or to amend the terms thereof.

#### Section 4 - Use of stamping machines

**Art.450.-** 1) Devices that are designed to impress stamps that show various stamp duties levied by the General Tax Directorate are referred to as stamping machines.

2) The conditions of use for stamping machines will be defined by a regulation.

**Art.451.-** At the latest on the tenth of each month, the user is required to pay the tax authority that is designated to this end the duties that represent the value of the stamps impressed.

**Art.452.-** 1) The following are deemed to be unstamped:

- a) any document bearing a stamp from a stamping machine that was issued by a person who was not authorised to use that machine;
- b) any document bearing a stamp, the amount of which is not covered by the guarantee deposit or the guarantor's commitment.

2) Breaches of the provisions of this section carry the penalties provided for in Article 494(3) of this Code.

## Chapter 4 - Obligations

### Section 1 - General obligations

**Art.453.-** 1) The imprint of the stamp cannot be covered with writing or altered.

2) Stamped paper that was used for any instrument whatsoever cannot be used for another instrument, even if not all the paper was used for the first instrument.

**Art.454.-** 1) Two instruments that follow one after the other on the same sheet of stamped paper cannot be executed or served, notwithstanding any customary practices or regulations to the contrary.

2) The following are exempted:

- a) ratifications of instruments entered into in the absence of the parties;
- b) receipts for the prices of sales and those for reimbursements of constitutional contracts and contracts that create rights *in personam*;
- c) inventories, minutes and other instruments that cannot be completed on the same day and in the same location;
- d) formal records of acknowledgement and removal of seals;
- e) documents served by bailiffs, which may also be written at the end of the judgments and other exhibits, copies of which are served.

3) Two or more tax payment receipts may be issued in the form of deeds or by tax collection officers on the same sheet of stamped paper, as payment against a single claim or a single land lease or rent payment. All other receipts that are issued on a sheet of stamped paper will not have any greater effect than they would have had if they had been printed on unstamped paper.

**Art.455.-** 1) *Notaires*, bailiffs, registrars, arbitrators and accountants are prohibited from acting and public administrations are prohibited from handing down any orders in response to an instrument, register or commercial paper that is not printed on stamped paper bearing the required stamp or that does not bear a certificate of payment.

2) Moreover no judge or public official can stamp and number a register that is subject to stamp duty, if the sheets thereof have not been stamped.

**Art.456.-** The statements of expenses drawn up by bailiffs, registrars and *notaires* must show in a specific column and for each instrument, the amount of the duties paid to the Treasury.

**Art.457.-** When a note, paper, ledger, statement or any other instrument that is subject to stamp duty and that is not registered is mentioned in a public, judicial or extrajudicial instrument and does not have to be submitted to the revenue agent when said instrument is registered, the public official or judicial officer is required to declare expressly in the instrument whether the instrument bears the required stamp and to state the amount of the stamp duty paid.

**Art.458.-** All registration revenue agents are prohibited:

- 1° from registering an instrument that is not on paper stamped at the required rate or that does not bear a certificate of payment;
- 2° from accepting for the formality of registration protests for non-acceptance of negotiable instruments without being provided with these instruments in the proper manner.

## Section 2 - Auxiliary stamp distributors

**Art.459.-** 1) Persons can only sell or distribute stamps, papers or printed stamps pursuant to an authorisation granted by the administration.

2) However, Treasury agents, special officers, post office clerks or managers, customs and tax officers are empowered, as of right, to sell or distribute these papers or printed documents.

3) Stamps seized on the premises of persons who engage in the trade thereof, in breach of the provisions of paragraph 2 of this Article, will be confiscated and handed over to the General Tax Directorate.

4) The conditions of application of this Article will be specified by a regulation, as necessary.

5) Special officers and authorised individuals are allocated a sliding-scale reduction on the annual amount of the purchases, the amount of which is defined as follows:

- 5% for the bracket up to XOF 100,000;
- 3% for the bracket from XOF 100,001 to XOF 400,000;
- 2% for the bracket from XOF 400,001 to XOF 1,000,000;
- 1% on amounts that exceed XOF 1,000,000.

6) The payment of the reductions will be charged to the State budget by the revenue agent after first paying the beneficiary.

## Book 4 - General provisions

## Part 1 - Taxpayers' obligations

## Chapter 1 - Identification of taxpayers

## Section 1 - Tax registration and identification of beneficial owners

## Sub-section 1 - Tax registration

**Art.460.-** (L.F.2024) 1) All natural or legal persons who are subject to a tax, duty or charge are required to send the tax administration a request for registration and for the allocation of a unique tax identification number, and to attach a location plan to their request. The information provided must, moreover, state the name and address of the beneficial owner of the enterprise or of the transactions to be effected.

2) The unique tax identification number must be:

- a) stated in all administrative formalities and, in particular, when filing tax or customs declarations;
- b) stated on the letters, invoices, remittances and other receipts drawn up or issued by the natural or legal persons referred to in paragraph 1 of this Article;
- c) mentioned after the name, trade name or corporate name on the declarations, notices, exhibits, instruments or all other documents that are produced, issued or entered into by said persons in the dealings with third parties.

3) The following must be declared within thirty (30) days of the date of modification:

- a) for legal persons: all modifications to the trade name, legal form, purpose, term of existence, registered office or the location of their principal place of business; increase, reduction or amortization of capital, issue, repayment or amortization of loans represented by marketable securities, replacement of one or more directors or managers or, in companies whose capital is not divided into shares, of one or more partners;
- b) for natural persons: all assignments, closures and/or changes of the place of the business activity.

4) The declaration provided for in paragraph 3 above is sent or delivered to the tax service to which the applicant is responsible.

**Art.461.-** (L.F.2024) 1) The following transactions can only be effected upon presentation of a unique tax identification number:

- a) the opening of an account with lending and microfinance institutions. Within the meaning of this Article, prepaid rechargeable debit cards are regarded as an account;
- b) the signature of all types of insurance contract;
- c) connection or subscription contracts for the water and/or electricity networks;
- d) property registration;

- e) authorisation to pursue a regulated profession.

Natural or legal persons who supply the services mentioned above must ensure that their clients or users provide the unique tax identification number before effecting any transactions with them. For bank accounts that are opened for minors, as well as the insurance contracts that are signed for them, the signatory or the policyholder must be required to present the unique tax identification number.

2) Moreover, no one may pursue the occupation of importer or exporter or obtain import or export licences or authorisations if they are not registered and in possession of a unique tax identification number, and up to date with their filing, payment and account keeping obligations.

The unique tax identification number and the importer's licence are personal and must only be used for the collection of one's own goods and other property. In the event of fraudulent use of the unique tax identification number or of the importer's licence of another person for the import of goods, the authorised customs agent will be jointly and severally liable for the payment of the resultant taxes, without prejudice to the penalties provided for in Article 495(3) of this Code and to criminal proceedings being brought against the perpetrators.

3) All natural or legal persons who carry out import, transit or export operations of goods and merchandise in the form of "grouping" on behalf of others are required to hold and communicate to the agents of the customs administration, the nominative list, the address and tax identification number of the actual importers and shippers of these goods, their quantities and their values, under penalty of the sanctions provided for in article 495 paragraph 3 of this Code.

This information is communicated by the General Directorate of Customs to the tax administration.

### Sub-section 2 - Identification of beneficial owners

**Art.462.-** (L.F.2023, L.F.2024) 1) For the purposes of this article:

- a) legal entities mean legal entities under Beninese law and foreign legal entities residing for tax purposes in the Republic of Benin;
- b) legal arrangements mean trusts or any other similar legal arrangements established in the Republic of Benin or not, the manager of which is resident or holds an asset in the Republic of Benin;
- c) the beneficial owner of a legal person or legal arrangement means the natural person(s) who ultimately exercises effective control over a legal person or legal arrangement. The term "ultimately exercises effective control" means situations where control is exercised directly or indirectly, alone or jointly, including through a chain of legal entities or arrangements.

2) Legal persons and managers of legal arrangements under Beninese or foreign law, whether or not they are subject to corporate tax or tax on business profits, must identify their beneficial owners and keep, in Republic of Benin, an updated register for this purpose.

3) The register of beneficial owners contains adequate, accurate and up-to-date information relating to:

- the identity of the beneficial owners;
- the nature, terms and extent of the control exercised over the legal entity or legal arrangement;
- the date on which the natural person(s) became, or ceased to be, beneficial owners of the legal person or legal arrangement.

4) Any beneficial owner of a legal entity or legal arrangement, and any legal entity or legal arrangement directly or indirectly holding an involvement in a legal entity or involved in a legal arrangement, are required to provide the persons referred to in paragraph 2 of this article, upon request or not, all information and supporting documents necessary to identify the beneficial owners. In the event of a change of beneficial owners, they must provide said information and documents within fifteen days. Any failure to comply with these transmission obligations must be declared to the tax administration by the persons referred to in paragraph 2 above within thirty days.

5) a) The information contained in the register of beneficial owners and the supporting documents relating to a beneficial owner are kept for a minimum period of ten years following the end of the year during which the latter ceased to be such, or following the end of the year of cessation of the legal entity or the functions of the managers of legal structures.

b) The obligation to keep the register is incumbent:

- for legal entities, to the directors of the legal entity, including any person having the power to act in the name and on behalf of the legal entity in the phase of its termination, or to their representative in the Republic of Benin for foreign legal entities;
- for legal arrangements, to managers residing in the Republic of Benin or, when they live abroad, to their representative in the Republic of Benin.

6) The persons referred to in paragraph 2 above are required to declare to the tax administration, using a form provided by them, information relating to their beneficial owners:

- a) at the time of their registration, for legal entities subject to this obligation under this Code, or within thirty days following their incorporation, for other legal entities, or their designation as manager, for legal arrangements;
- b) at the latest, April 30 of each year, at the same time as the declaration of results, for legal entities and legal arrangements subject to tax;
- c) within thirty days following the moment when the persons referred to in paragraph 2 above became aware or should have become aware of the event which makes it necessary to modify the information on the beneficial owners.

7) Any failure to comply with any of the obligations referred to in this article, including the communication or declaration of inaccurate or incomplete information or documents, is sanctioned under the conditions provided for in article 496 paragraph 4 of this Code.

8) A regulatory act establishes the conditions and methods of application of this article.

## Section 2 - Trade sign or business data plate

**Art.463.-** 1) Persons who are subject to corporate income tax, tax on business profits or the composite business tax are obliged to display a trade sign or business data plate at their places of business, in particular on the premises that house their headquarters, offices, workshops and/or factories, warehouses or stores.

2) The trade sign or business data plate must, while respecting the rules for the exercise of the profession, at least contain the following information:

- a) the corporate name or trade name;
- b) the complete address, which must obligatorily state the "plot access road" number for the place of business and the working telephone number;
- c) the registration number with the trade and property credit registry or the professional identification number;
- d) the unique tax identification number.

3) The trade sign or business data plate must be displayed visibly and legibly above the main entrance to the location described in paragraph 1 of this Article.

## Section 3 - Representation of taxpayers

**Art.464.-** 1) Any person who is authorised to represent a taxpayer must complete the tax returns, submit the financial statements, pay the taxes and fulfil all the obligations that are incumbent upon that taxpayer.

2) The persons referred to in this article include:

- a) the guardian, tutor or any other person who has custody of a minor or any other person with diminished legal capacity;
- b) the statutory or judicial administrator of a property or bequest, or the heirs of said property;
- c) the owner of an enterprise;
- d) the members of a partnership with unlimited liability;
- e) the president, the managers, the director or any other representative of a company or of any other legal person;
- f) the representative of a company or of any other legal person undergoing liquidation;
- g) any other person who is mandated to represent or assist the taxpayer.

3) All persons referred to in sections a, b, e, f or g of paragraph 2 above are required to notify the new responsibility or appointment to the Director General of Taxes within a time-limit of fifteen (15) days that follows said the change of responsibility or appointment.

4) The persons referred to in section g of paragraph 2 above must provide proof of a duly registered power of attorney. The production of a power of attorney is not required of a lawyer who is duly registered with a bar association and retained to this end.

**Art.465.-** (L.F.2024) 1) Entities that carry on business activities in the Republic of Benin or that own property in that country without having their registered office therein, and that are liable to corporate income tax or to the tax on business profits, are required to:



- a) appoint a representative in the Republic of Benin who is granted marketable securities marketable securities powers with a view to representing them validly;
- b) whenever instructed by the tax administration, provide the documents that must be kept in accordance with tax legislation;
- c) comply with the accounting and financial filing obligations, indicating the name and address of the accountant(s) or expert(s) responsible for keeping their accounts.

The representative thus appointed is required to fulfil all the filing obligations and obligations to pay the taxes, duties and charges owed by the entity that is represented. In the absence of the appointment of a representative, the members established in the Republic of Benin of temporary groupings of undertakings which include one or more non-resident undertakings are deemed to be the representatives of those undertakings.

2) If they fail to do so, these entities will be subject to compulsory taxation without prejudice to the tax and criminal penalties provided for in Title 2 of Book 4 of this Code.

## Chapter 2 - Filing obligations

### Section 1 - General provisions

**Art.466.-** 1) The returns provided for by this Code may be submitted in printed or electronic form.

2) Electronic returns will have the same legal effects as printed returns or returns filed using a model form provided by the administration.

**Art.467.-** 1) Returns filed by taxpayers for the computation of income tax or the tax on profits will be binding on them for determining the indemnities or damages they are claiming from the State or municipalities, where the amount of said indemnities or damages is directly or indirectly related to the amount of their profits or of their income.

2) Claimant taxpayers are required to provide, in support of their claim, a certificate of tax compliance issued by the relevant revenue agent for the location of their domicile.

### Section 2 - Annual declarations

#### Sub-section 1 - Annual declarations of amounts paid to third parties

**Art.468.-** 1) Taxpayers who are liable to the tax on business profits or corporate income tax and who, during the pursuit of their profession, effect transactions with third parties who are not their employees, must declare the amounts of these services where they exceed fifty thousand (50,000) CFA francs per year including all taxes, for a given beneficiary.

2) To this end, they are required to attach to their annual return a statement that mentions the name, exact address and unique tax identification number of each beneficiary, as well as the total amount that was paid to them, including all taxes.

3) The enterprises, companies or associations that collect or pay copyright royalties or inventor's royalties are under the same obligation, for the amounts they pay to their members or to their principals.

4) All breaches of the provisions of this Article will give rise to the application of the penalties provided for by Article 497 of this Code.

### Sub-section 2 - Annual declaration of amounts paid to partners

**Art.469.-** 1) The managers of partnerships that are not subject to corporate income tax are required to file, at the latest on 30 April of each year, a statement containing the following information:

- a) the first names, surnames and home addresses of the partners;
- b) the portion of the profits for the fiscal year or fiscal years that ended during the preceding calendar year that correspond to each of the partners' rights.

2) Joint-stock companies are required to declare the amount of the remunerations paid during the preceding year to the members of their board of directors who are liable to the tax on income from investments or the tax on wages and salaries.

3) All breaches of the provisions of this Article will give rise to the application of the penalties provided for by Article 497 of this Code.

### Sub-section 3 - Declarations of transfer prices

**Art.470.-** Enterprises that are controlled by or that possess the control of enterprises established outside of Benin within the meaning of Article 45(2) of this Code, the annual turnover of which or the gross assets of which exceed or are equal to one billion (1,000,000,000) CFA francs are required to file, by electronic means, an annual declaration of transfer prices by 30 April of each year at the latest.

The contents and the format of this declaration will be defined by an order of the Finance Minister.

All breaches of the provisions of this Article will give rise to the application of the penalties provided for by Article 496 of this Code.

*[NB - See Order n°2423/MEF/CAB/SGM/DGI/DLC/410SGG20 of 8 October 2020 that defined the content and format of the annual declaration of transfer prices referred to in Article 34 of the General Tax Code]*

**Art.471.-** 1) All enterprises established in the Republic of Benin are required to file, within twelve (12) months of the close of the fiscal year, solely by electronic means, a country-by-country report, using a template defined by the administration, which shows the allocation of the profits, on a country-by-country basis, of the group of related enterprises to which they belong, and the tax and accounting data, as well as information on the place of performance of the activities of the enterprises that make up the group, where:

- a) they hold, directly or indirectly, a sufficient interest in one or more enterprises such that they are required to prepare consolidated financial statements in accordance with the accounting principles in force or would be required to do so if their shareholdings were listed on the stock market in the Republic of Benin; and

- b) they generated consolidated annual turnover excluding taxes that exceeds or is equal to four hundred and ninety-two billion (492,000,000,000) billion CFA francs in respect of the fiscal year that preceded the fiscal year concerned by the declaration; and
  - c) no other enterprise holds, directly or indirectly, an interest described in section (a) of this paragraph in the aforementioned enterprise.
- 2) All enterprises established in the Republic of Benin are required to file the country-by-country report within the time-limit and in accordance with the aforementioned methods and formats, where they:
- are directly or indirectly held by an enterprise established in a State that does not require the filing of the country-by-country report, and that would be required to file said report if it were established in the Republic of Benin, or
  - are directly or indirectly held by an enterprise established in a State that is not included on the list provided for in this article but with which Benin has signed a mutual assistance agreement for tax matters, or
  - were designated for this purpose by the group of related enterprises to which they belong and informed the tax administration of this.
- 3) All enterprises that are established in the Republic of Benin, which are directly or indirectly held by an enterprise established in a State included on the list provided for in this article, and that are required to file a country-by-country report under the legislation in force in that State or that would be required to file that declaration if they were established in the Republic of Benin, are also required to file the declaration provided for in this article if a systemic deficiency of the State of tax residence of the enterprise that directly or indirectly holds them was notified to the enterprise established in the Republic of Benin by the tax administration.
- 4) Where two or more enterprises established in the Republic of Benin, which belong to the same group of related enterprises, fulfil the conditions defined in paragraphs 2 and 3 of this Article, one of them may be designated by the group to provide the tax administration with the country-by-country report, provided that the tax administration is informed that this filing aims to fulfil the obligation that all the enterprises of the group of related enterprises that are residents of the Republic of Benin are under for tax purposes.
- 5) The contents of this declaration are defined by an order of the Finance Minister.
- 6) The declaration provided for in this article, subject to reciprocity, is automatically exchanged with the States that have signed an agreement to this end with the Republic of Benin.
- 7) The list of the States that have signed an agreement with the Republic of Benin authorising the automatic exchange of the country-by-country report provided for in this article is determined by an order of the Finance Minister.
- 8) All breaches of the provisions of this Article will give rise to the application of the penalties provided for by Article 496 of this Code.

**Sub-section 4 - Annual declarations of salaries**

**Art.472.-** 1) Any natural or legal person who employs workers is required to file, by 30 April of each year at the latest, a comprehensive statement that shows, for each of the workers they employed during the previous year, the following information:

- a) the surname, first names, position and address;
- b) the amount of salaries that are liable to the tax on wages and salaries;
- c) the amount of the benefits in kind;
- d) the amount of the specific allowances designed to cover the expenses that are inherent in the position or the job;
- e) the amount of the salary components that are exempt;
- f) the period to which the payments apply, where said period is less than one year;
- g) the amount of the tax on wages and salaries applied during the year.

2) Said same information must be provided within the same time-limits by all taxpayers who have their residence in the Republic of Benin and who receive salaries, wages, life annuities or pensions:

- a) from debtors who are domiciled or resident outside of national territory;
- b) from diplomatic missions and international organisations established in the Republic of Benin.

3) All breaches that are identified in the provision of the information referred to above will be punished under the conditions provided for in Article 497 of this Code.

**Sub-section 5 - Declaration by manufacturers, importers and wholesalers**

**Art.473.-** 1) Manufacturers, importers, wholesalers, and all enterprises that carry out wholesale and semi-wholesale operations must attach the list of their clients to their annual income statement, and include for each of them:

- the identity and the exact address, as well as the post office box number;
- the unique tax identification number, as well as the registration number with the trade registry, followed by the name of the location where the registration was made or, as applicable, the word "none";
- the total amount of the purchases made during the previous year;
- the total amount of the withholding tax deducted by the wholesale trader and paid over monthly.

2) All breaches that are identified in the provision of the information referred to above will be punished under the conditions provided for by Article 498 of this Code.

**Sub-section 6 - Declaration by contractors in the building and public works sector**

**Art.474.-** (L.F.2024) 1) Contractors in the building and public works sector join to their annual tax return a statement specifying the identity and exact address of their subcontractors, as well as the amount and nature of the work entrusted to them during the previous year. A statement containing the same information is drawn up and sent for co-contractors or members of groups, including co-contractors who are not resident in the Republic of Benin.

2) All breaches that are identified in the provision of the information referred to above shall be punished under the conditions provided for in Article 498 of this Code.

### Sub-section 7 - Declaration by telephone companies

**Art.475.-** 1) Telephone companies that are established in the Republic of Benin must attach to their annual income statement a document that contains the following information:

- a) the pricing plans;
- b) the interconnection agreements with local and external operators;
- c) the roaming agreements;
- d) the documentation on formats.

2) All decisions to change parameters in the documents referred to in paragraph 1 above must imperatively be notified to the tax administration by the operator concerned, at least eight (8) days before the implementation of the parameter modifications.

3) These enterprises are required to disclose to the tax administration, at its request, on magnetic storage media, a statement that includes the following information:

- a) the reports of national and international calls that were post-paid, paid using pre-payments, including recharges, and that used interconnection and roaming;
- b) reports of recharging transactions.

4) All breaches that are identified in the provision of the information referred to above will be punished under the conditions provided for in Article 498 of this Code.

### Section 3 - Declarations in the event of sale, discontinuance, transfer and death

**Art.476.-** (L.F.2024) 1) Any cessation of business or transfer of a company subject to corporate income tax or business profits tax must be notified in advance, in writing or by electronic means, to the tax authorities three months before the date of cessation or transfer.

In the event of cessation of activity, the letter of information shall indicate the surname, first names or company name and address of the operator, as well as the effective date of cessation. When a taxpayer terminates his participation in a temporary grouping of companies or if the activities of such a grouping or association are terminated, the representative of the grouping is required to inform the tax authorities in the manner and within the time limits set out in this paragraph.

In the case of a transfer, the letter sent to the tax authorities is attached to the transfer deed and must state the surname, first names or company name and address of the transferor and the transferee, as well as the effective date of the transfer.

2) In the event of a suspension or provisional stoppage of business activity, the enterprise must file, with the relevant revenue agent, a tax declaration using the specific form for a suspension of business activity.

The declaration must be filed within a maximum of ten (10) days as from the date of the stoppage. Enterprises that have declared a suspension of business activity are not exempted from the requirement to file periodic tax returns.

Upon expiration of the period of suspension of business activity, the enterprise must obligatorily file either a declaration of discontinuance of business activity, or a declaration of resumption of business activity with the tax office to which it reports.

3) Within thirty (30) days following the discontinuance or the sale, the persons liable to the tax must submit an income statement under the conditions provided for in Articles 49 et seq. of this Code, subject to penalties in the event of late or incomplete submission.

The profits generated during the year or fiscal year of the discontinuance or sale, until the date thereof, will be taxable under the rules in force on the date of the declaration.

In the event of a sale, with or without valuable consideration, whether forced or voluntary, the buyer will be jointly and severally liable with the seller or the successors-in-interest thereto for the payment of the tax owed in respect of the profits, including the capital gains, that is due by the seller up through the date of the sale.

4) The provisions of this Article are also applicable in the event of the proprietor's death. The information that is needed to compute the tax owed in respect of the profits must then be provided by the deceased's beneficiaries within six (6) months of the date of the death.

**Art.477.-** 1) If the taxpayer dies, the deceased's beneficiaries must, within six (6) months of the date of the death, declare the income that is liable to the tax on income from real estate, the tax on income from investments and the tax on wages and salaries, which was accrued during the year of death and that has not been subject to withholding tax in the Republic of Benin.

The corresponding tax must be paid in support of this declaration.

2) Taxpayers who definitively leave the Republic of Benin, in particular in the event of the transfer of their home abroad or the abandonment of all residence on national territory, are under the same obligation, which must be fulfilled two (2) months prior to their departure.

#### Section 4 - Issuance of certifications and certificates

**Art.478.-** 1) Taxpayers or their duly authorised representatives are authorised to obtain the following documents, provided that they concern their own tax situation:

- the tax clearance certificate;
- the tax compliance certificate;
- the tax residence certificate.

2) The tax clearance certificate is issued to natural or legal persons who have complied with their tax obligations.

It is issued by the Director General of Taxes only in certain cases.

3) The tax compliance certificate certifies that the enterprise to which it is issued has fulfilled its obligations. The tax compliance certificate must be requested, in particular:

- a) by the ordering parties in public procurement contracts, regardless of who the bidders are;
- b) by banks and financial institutions, and decentralised financial systems, for transfers of funds or for all financial assistance that is requested by a professional;
- c) by public services, organisations, associations or governing bodies that issue visas, residence permits or approvals for a regulated profession;

- d) by any person who has left their tax residence in the Republic of Benin and has definitively left that country.

4) The tax residence certificate is issued to persons who have a tax home on national territory within the meaning of Articles 5 and 121 of this Code, in order to prove their tax residence in the Republic of Benin to third parties.

## Chapter 3 - Accounting obligations

### Section 1 - Keeping of accounts

**Art.479.-** 1) All enterprises that are operated in the Republic of Benin must keep their accounts in that country.

If the enterprise is operated by a non-resident, separate accounts must be kept for the activities that are carried on in the Republic of Benin.

2) The accounts must obligatorily be kept in French.

For the permanent establishments of foreign companies, if the accounts are kept in a language other than French, a sworn translation into French must be provided in response to all requests by the tax administration.

3) The accounts must be kept in accordance with the provisions of the OHADA Uniform Act on accounting law and financial reporting.

4) Enterprises that do not fall within the scope of application of the accounting system of the OHADA provided for by the Uniform Act referred to in paragraph 3 of this Article must keep accounts that comply with the particular accounting system required for their business sector or due to their specific legal status. This provision applies, in particular, to banks, financial institutions and insurance companies.

5) Venture capital or equity investment firms and financial institutions that carry out ancillary or related activities must keep separate accounts of said activities, which are automatically subject to ordinary-law tax treatment.

### Section 2 - Presentation and records of accounting documents

**Art.480.-** 1) Accounting documents must be kept in the Republic of Benin for a period of ten (10) years as from the date of the last transaction mentioned or the date on which the documents were drawn up.

This obligation covers, in particular:

- a) the accounting ledgers and summary documents, which must be kept according to the chart of accounts defined by the Organization for the Harmonization of Business Law in Africa;
- b) the copies of invoices, bills, contracts, statements of fees, purchase orders and delivery notes;

- c) documents and registers which must be kept pursuant to the OHADA Uniform Acts concerning commercial companies and general commercial law;
  - d) for companies that have an independent auditor, the report provided for by Article 715 of the OHADA Uniform Act concerning commercial companies;
  - e) for insurance companies, the statements provided for by the CIMA (*Conférence interafricaine des marchés d'assurance*);
  - f) all other supporting documents for the information contained in the declarations filed in respect of the reference fiscal year.
- 2) The same record-keeping obligation applies when the accounts are computerised. The filing party is also required:
- a) to implement procedures that make it possible to meet the requirements of regularity, security, consistency and control, in accordance with the provisions of Articles 22 and 67 of the OHADA Uniform Act on accounting law and financial reporting;
  - b) whenever requested by the tax administration, to make available the sources used to said administration.
- 3) For enterprises that are subject to the composite business tax, the record-keeping obligation covers the following documents:
- a) a register or journal of purchases and expenses that is filled in chronologically;
  - b) a register or journal of sales and supplies of services that is filled in chronologically.

## Chapter 4 - Invoicing obligations

### Section 1 - Invoicing obligation

**Art.481.-** 1) Unless an express derogation is granted by the Director General of Taxes, all operations carried out by a natural or legal person who is subject to corporate income tax, the tax on business profits, the composite business tax or that is a taxable person for the purposes of value added tax must be evidenced in a standard invoice or a document that serves as such an invoice: details of work, statements of fees, instalments, etc.

- 2) Standard invoices must obligatorily show:
- a) the order number and the date of invoicing;
  - b) the name or trade name, address, unique tax identification number and registration number with the trade or property credit register of the supplier or their membership number of the governing body, trade guild or organisation registration number;
  - c) the name or trade name, address and unique tax identification number of the client;
  - d) the nature and the subject of the transaction;
  - e) the quantity and the precise unit description of the goods and services sold;
  - f) the unit and total price;
  - g) the prix excluding value added tax;
  - h) as applicable, the rate and the amount of the tax owed or the term "exempt";
  - i) the total amount owed by the client;
  - j) as applicable, the amount of the profit-based tax instalment and all other taxes and duties;
  - k) the identification number of the certified electronic invoicing machine;
  - l) the signature and the electronic code.



3) Natural or legal persons, in particular, who effect transactions for purchases of goods and services from the persons referred to in paragraph 1 above, are required to request and obtain a standard invoice at the time of such purchases.

## Section 2 - Certified electronic invoicing machine

**Art.482.-** 1) Standard invoices are issued and sent by means of an electronic invoicing machine, in production mode, that is certified by the General Tax Directorate.

2) A certified electronic invoicing machine is an invoicing unit or an electronic invoicing system that is approved by the General Tax Directorate and linked to an invoicing control module.

The certified electronic invoicing machine may also exist in digital format.

3) Business invoicing systems, which are commercialised or developed by an enterprise for its own use must meet the technical specifications published by the General Tax Directorate and be approved before any used in the Republic of Benin. These systems must also meet the criteria of inalterability, security, storage and archiving of data with a view to being audited by the tax administration.

4) The import, commercialisation or distribution of certified electronic invoicing machines is contingent on the approval of the Finance Minister.

5) The terms of certification, approval of importers and distributors, accreditation of business invoicing systems, the obligations that are incumbent upon enterprises that use certified electronic invoicing machines, the publishers of software applications, and the approved importers and distributors of certified electronic invoicing machines are defined by an order of the Finance Minister.

[NB - See:

- *Order n°711/MEF/DC/SGM/DGI/DIE/DLC of 5 March 2018 that provides for the terms of use of certified electronic invoicing machines ("MECeF")*
- *Order n°2021-2435/MEF/CAB/SGM/DLC/SLRI/258SGG21 of 22 September 2021 that provides for the conditions of commercialisation and use for business invoicing systems]*

**Art.483.-** 1) Natural or legal persons who have implemented an electronic invoicing system and acquired certified electronic invoicing machines will receive a flat-rate reimbursement for the cost of purchase of the machines, provided that they make a request to the Director General of Taxes.

2) The reimbursement is granted on the basis of the report on the actual annual use of the certified electronic invoicing machine, in the form of a credit to be offset against corporate income tax, the tax on business profits or the composite business tax.

3) For enterprises that are not subject to presumptive taxation, the reimbursement will be spread over three (3) years. The amount of the credit reimbursed per year of use of the machines is determined as follows:

- 25% in respect of the first year;
- 25% in respect of the second year;

- 50% in respect of the third year.

4) Enterprises that are subject to the composite business tax will benefit from full reimbursement at the end of the first year of actual use of the machines.

5) A tax credit certificate will be issued to the enterprise in accordance with the procedure for exceptional tax treatment.

[NB - See Order n°2021-2306/MEF/CAB/SGM/DGI/DLC/2315SGG21 of 24 August 2021 that set that amount of the reimbursement of the purchase costs of certified electronic invoicing machines]

## Part 2 - Penalties

### Chapter 1 - Reporting of violations and breaches

**Art.484.-** 1) Tax officers who have at least the grade of revenue agent or who are authorised by the Director General of Taxes may record, in an official report, a copy of which is issued to the interested party, all breaches of the obligations referred to herein.

2) The following, in particular, must be noted in an official report, namely cases of:

- a) pursuit of a business activity without being in possession of a unique tax identification number;
- b) failure to declare a change of residence or address;
- c) failure to declare a change of characteristics of the business, such as a change of the location of the headquarters or the opening of a new establishment;
- d) obstructing a tax audit or the audit of the standard invoice;
- e) providing a false unique tax identification number or a false address, or the absence of a data plate;
- f) poor keeping, failure to keep or destruction of an accounting document, before the end of period during which such documents must be kept;
- g) refusal to provide any document, provision of which is demanded;
- h) failure to respond to a written request within the statutory time-limit;
- i) reference to an unwarranted indirect tax on an invoice or a document in lieu thereof;
- j) refusal to answer administrative correspondence;
- k) refusal to apply a garnishee notice;
- l) failure to issue standard invoices and all other breaches that may be perpetrated by importers, suppliers, distributors of certified electronic invoicing machines, publishers of software applications and the persons referred to in paragraph 1 of Article 501 of this Code;
- m) theft of the identity of a third party for the purposes of issuing fraudulent or forged standard invoices;
- n) all other breaches for which penalties are stipulated in this Chapter.

3) The official report must contain, under penalty of invalidity, the following information:

- a) the surname(s) and first name(s) of the officers who were involved in reporting the offences;

- b) the place, date and time at which it was drawn up and completed;
- c) the surnames and first names or the trade name of the person reported and their address;
- d) the nature of the report or of the breach, with precise details;
- e) the provisions of law applied;
- f) the signature of the reporting officer;
- g) the signature of the taxpayer or the statement that the taxpayer refused to sign the official report. This information is only obligatory where the official report is drawn up following a finding made or a breach identified during an inspection in situ.

## Chapter 2 - Tax penalties

### Section 1 - Tax base penalties

#### Sub-section 1 - Missing or late returns

**Art.485.-** (L.F.2024) 1) Failure to file within the prescribed time limit a declaration or deed specifying the elements to be considered for the assessment or liquidation of any tax whatsoever shall result in the application of a late filing penalty of 20% on the amount of duties payable by the taxpayer or resulting from the declaration or deed filed late.

This penalty also applies to taxpayers who fail to provide the documents required by articles 50 and 66 of this Code in support of their tax returns, or who provide inaccurate or incomplete information.

2) Where the return or the document was not filed within thirty (30) days following receipt of a final notice, or where the taxpayer did not file the returns or documents required, two (2) months after the filing date, the penalty will increase to 40% of the amount of the taxes that result from the return.

3) The penalty provided for in this article is deemed to include the interest on arrears.

#### Sub-section 2 - Incomplete returns

**Art.486.-** 1) Inaccurate or missing information in a return or a document that contains data to be used for the assessment or computation of the tax, as well as the recovery of a tax claim, payment of which was unduly obtained from the State, will trigger the application of an assessment penalty of 20% to the undeclared taxes.

2) This penalty is increased to 40%:

- a) in the event of an inaccuracy that is revealed in the written documents and information provided in support of the declaration of the reported profit;
- b) if the taxpayer has not established their good faith.

3) It is increased to 80%:

- a) in the event of fraudulent practices;
- b) in the event that the tax is estimated by the administration, due to failure to file a return within eight (8) days of receiving a final notice;
- c) in the event of illegal invoicing of value added tax.

4) Reductions or cancellations of tax credit for value added tax or a profit-based tax pre-payment that are declared following a tax audit, will trigger the application of a tax penalty equal to 25% of the amount of the reduced or cancelled credit.

This penalty is increased to 80% in the event of the reduction or cancellation of a value added tax credit that was reimbursed.

5) Except where a cumulated penalty is expressly permitted, a breach can only give rise to a single tax penalty, with the higher amount being applied.

### Section 2 - Collection penalties

**Art.487.-** 1) All taxpayers who, upon expiration of the time-limits specified by this Code, have not paid in full the taxes, duties and charges for which they have received a notice to pay or that they must pay of their own initiative, must, without prejudice to the expenses concerning the proceedings that may have been initiated against them, pay a penalty of 10% on the outstanding portion.

2) Any delay in the payment of any one whatsoever of the instalments and prepayments provided for in this Code will trigger the application of a penalty of 10% of the amounts not paid on time.

3) The relief, reductions or leniency granted to the taxpayer via non-contentious or contentious proceedings will, as of right, trigger the proportional annulment of the penalty.

**Art.488.-** 1) All taxpayers who have not paid the taxes, duties, charges and fees that are chargeable, within the statutory time-limits, must pay, independently of the penalties provided for in the preceding articles, interest on arrears of 0.25% per month or fraction of a month.

2) Said interest will accrue as from the first day of the month following that during which the tax becomes chargeable.

3) The interest is calculated on the amount of the tax excluding the penalties.

4) The amount of the interest thus calculated is capped at the amount of the tax excluding the penalties.

**Art.489.-** 1) All delays in the payment of the tax on motor vehicles are penalised by the application of a 20% penalty to the amount owed.

2) For vehicles brought into service over the course of the year, the penalty is payable on the first day of the month following that during which the taxes become chargeable.

3) Failure to pay the tax on motor vehicles will lead to the immobilisation of the vehicle, with the assistance of the officers who are responsible for reporting road traffic offences, and the return thereof is contingent on payment of the tax owed, including any arrears.

**Art.490.-** For street market traders, failure to provide proof of payment of the composite business tax will lead to the seizure of the goods and the immobilisation of the vehicle. The return of the seized items is contingent on payment of the tax.

### Section 3 - Penalties concerning withholding taxes

**Art.491.-** 1) All persons who are required by the provisions of this Code to withhold a tax or a duty and who did not apply such withholding or who withheld an insufficient amount will be personally liable for the amount of the withholding that was not applied and for the associated penalties.

2) Failure to pay over withholdings within the stipulated time-limits will lead to the application of a late payment penalty of 20% that is applicable to the amounts that were not paid over.

This penalty is increased to 40% if the delay exceeds two months.

**Art.492.-** 1) The penalties provided for by Articles 459 to 461 of the Customs Code apply to the profit-based tax prepayment that is levied at the customs border.

2) The penalties provided for in Article 485 of this Code apply to taxpayers who file the declaration of the profit-based tax prepayment after the deadline or make the payment after the deadline.

3) By way of derogation from the provisions of Article 491 above, the importers, producers or resellers, clerks and officers of public authorities, as well as the beneficiaries of services who have not applied or paid over the withholding of the profit-based tax prepayment, are personally required to pay over the amount of the profit-based tax prepayment and are liable to a penalty equal to 100% of the withholding that was not applied or not paid over. The penalty is reduced by half for the first breach.

4) The penalties listed in paragraph 3 of this Article are applicable to the persons designated in Article 143 of this Code.

5) All unjustified allocation of a profit-based tax prepayment will trigger the payment of the amount of the corresponding profit-based tax prepayment, without prejudice to the application of the fines provided for in paragraph 3 of this Article.

### Section 4 - Specific penalties concerning registration and stamp duty

#### Sub-section 1 - Penalties concerning registration duties

**Art.493.-** 1) The following are punished with a penalty of one hundred thousand (100,000) CFA francs for each breach reported:

- a) failure to comply with the provisions of Articles 371 to 374, 377 to 379, 396 and 412 of this Code;
- b) concerning public sales:
  - all sales by a public official or judicial officer without declaring said sales in the official report;
  - each item sold by auction that is not mentioned in the official report of the sale, in addition to the reimbursement of the duty;
  - each alteration of the price of the items sold by auction in the official report, independently of the reimbursement of the duty and the penalties for false records;

- persons who sell publicly or who arrange for public sale by auction, without calling on the services of a public official.

2) The late submission of an instrument that is subject to the “free of charge” formality carries a penalty of fifty thousand (50,000) CFA francs for each breach reported.

3) Whosoever breaches the obligations stipulated in Article 396 of this Code will be personally liable for the chargeable duties and penalties, unless they take action against the person who is responsible for payment.

A *notaire* who places on record an instrument that evidences the acquisition of rights in rem in immovable property, or of going concerns that are linked to an estate will be jointly and severally liable for the duties and penalties.

The same applies to any *notaire* whose services are used for a simulated transaction, the result of which is to reduce the tax base or the assessment of the tax or of the duties to be levied on the undisclosed instrument.

### Sub-section 2 - Penalties concerning stamp duties

**Art.494.-** 1) All non-compliance with respect to stamp duties carries one of the following penalties:

- payment of insufficient duties: XOF 2,500;
- failure to pay duties: XOF 5,000;
- repeated non-compliance of either type: XOF 10,000.

In all cases the amount of the chargeable duties must be paid.

2) All breaches of the texts that organise the payment of stamp duties that are collected by the General Tax Directorate carry a penalty of five thousand (5,000) CFA francs, where they did not cause failure to pay the tax within the time-limit defined by the decision that authorised said method of payment.

If this is not the case, this breach carries a penalty equal to the amount of the chargeable tax and cannot be less than five thousand (5,000) CFA francs.

3) All fraud or attempted fraud and, in general, all practices, the aim or result of which is to defraud or compromise tax, which are committed in the use of stamping machines, is punished by a penalty equal to 20% of the amount of the duties evaded, with a minimum of one million (1,000,000) CFA francs, without prejudice to the payment of the duties evaded.

## Section 5 - Penalties concerning taxpayers' general obligations

### Sub-section 1 - Penalty for non-compliance with the taxpayers' identification obligations

**Art.495.-** (L.F.2024) 1) Failure to display the unique tax identification number where it is required or the provision of a false number, and failure to affix a trade sign, business data plate or “Plot Access Road” number or all other official localisation information, carries a tax penalty of one hundred thousand (100,000) CFA francs.

This penalty is increased to two hundred thousand (200,000) CFA francs in the event that there is no compliance remediation within a time-limit of thirty (30) days following a final notice.

2) A tax penalty of one hundred thousand (100,000) CFA francs is applicable to all taxpayers who did not file or did not file on time the declaration provided for in paragraph 3 of Article 460 of this Code.

This penalty is increased to two hundred thousand (200,000) CFA francs in the event of failure to submit the declaration within thirty days of formal notice.

3) A penalty of ten million (10,000,000) CFA francs is applicable to all taxpayers who used their unique tax identification number for the collection of goods belonging to another person.

### Sub-section 2 - Penalty concerning filing obligations

**Art.496.- (L.F.2024)** 1) A tax penalty of one hundred thousand (100,000) CFA francs is applicable to:

- all enterprises that benefit from exceptional treatment or all new enterprises that have not filed or have filed late the declaration of the results for the previous year or fiscal year;
- all public officials who have not complied with the obligation provided for in Article 397 of this Code.

2) All taxable persons for the purposes of value added tax who did not file a declaration of turnover on time stating "zero" or a "credit" declaration, are liable to a penalty equal to fifty thousand (50,000) CFA francs per month or part of a month's delay in filing, with a maximum of five hundred thousand (500,000) CFA francs.

The same penalty is applicable to the taxpayer who did not file on time or who filed a "zero" declaration or a declaration with a credit for the profit-based tax instalment.

3) A tax penalty is applicable to all enterprises that filed three (3) months after the payment of the invoices the application for a tax credit certificate concerning a public procurement contract with external financing or other exceptional rules. The amount of the penalty is determined by applying a rate of 20% to the amount of the credit requested. The total amount of the penalty cannot exceed fifty thousand (50,000) CFA francs.

4) A penalty of one million (1,000,000) CFA francs is applicable in the event of a case of failure to provide information or the omission of any of the constituent elements of the financial statements.

The same applies to taxpayers who have not complied with the requirements of Article 462 of this Code. This fine is applicable only if the taxpayer fails to regularise the situation within eight days of a formal notice being sent to him.

In the event of a repeated breach, the amount of the penalty is increased to two million (2,000,000) CFA francs.

5) A penalty of ten thousand (10,000) CFA francs is applicable to the persons and companies that are subject to the requirements of Article 94 of this Code, for each omission or inaccuracy.

6) The failure to submit on time, or the submission of an incomplete or inaccurate version of, the declaration of transfer prices provided for in Article 471 of this Code within the stipulated time-limit, will trigger the application of a penalty equal to ten million (10,000,000) CFA francs.

**Art.497.-** 1) All breaches of the requirements of Articles 468 and 469 of this Code will give rise to the imposition of a penalty equal to 50% of the amount of the payments that were not declared. This fine is reduced by one-half for the taxpayer's first offence.

2) This penalty is only applicable after failure to remedy compliance within eight (8) days of a final notice being sent to the taxpayer.

3) The application of the above penalties does not preclude the triggering of joint and several liability for payment of any taxes that are owed by the beneficiaries of the remunerations.

**Art.498.-** 1) All enterprises that fail to disclose the information listed in paragraph 1 of Article 473 of this Code, or which provide inaccurate or insufficient information, are liable to a tax penalty equal to 10% of the total amount excluding value added tax of the transactions effected, with a minimum of five hundred thousand (500,000) CFA francs. They will be held jointly and severally liable for the payment of the taxes owed by the customers in question.

2) This penalty is only applicable after failure to remedy compliance within eight (8) days of a final notice being sent to the taxpayer.

3) The imposition of this penalty does not preclude the taxation of the same amounts in the name of the beneficiary.

4) All delays, omissions or inaccuracies identified in the provision of the information referred to in Articles 95, 474 and 475 of this Code are punished by a tax fine of one hundred thousand (100,000) CFA francs, increased by fifty thousand (50,000) CFA francs per month or per fraction of a month's delay.

In all cases, the total amount of the tax fine cannot exceed one million (1,000,000) CFA francs.

**Art.499.-** 1) For capital gains tax on real estate, an omission in the origin of title stated in the instruments or declarations of changes of ownership of real estate, or the information required by Article 114 of this Code, is punished by a penalty equal to 20% of the chargeable tax. This penalty is personal with respect to the judicial officer who drafted the instrument or to the declaring party.

2) Statements of a purchase value that are found to be false are liable to a penalty equal to 40% of the tax calculated, taking into account the actual purchase value.

3) All delays in the payment of the tax will trigger the application of the penalties provided for in Article 485 of this Code.

### Sub-section 3 - Penalty concerning accounting obligations

**Art.500.-** Enterprises that have not kept proper accounts or that have failed to provide the accounting documents listed in Article 480 of this Code, are liable to a penalty of one million (1,000,000) CFA francs per accounting period.



In the event of a repeated breach, the penalty is increased to two million (2,000,000) CFA francs per accounting period.

**Art.501.-** 1) All business agents, accountants or all other persons, associations, groupings or companies the profession of which is to keep or assist in keeping the accounts of multiple clients, who assisted in preparing or using documents or information that are acknowledged to be inaccurate, are liable to a tax penalty set at five hundred thousand (500,000) CFA francs for the first breach they are found to have committed, one million (1,000,000) CFA francs for the second breach, and so on and so forth; the amount of the penalty is increased by five hundred thousand (500,000) CFA francs for each new breach, regardless of whether said breaches involved only one or several taxpayers, either successively or simultaneously.

Where these documents or information that are acknowledged to be inaccurate concern standard invoices, the penalties will be equal to double the amount of those specified above.

2) The party in breach and their client will be jointly and severally liable for the payment of the penalty, without prejudice to the penalties provided for in paragraph 1 of Article 502 of this Code, which are assessed to the client separately.

3) The penalty is levied by General Tax Directorate officers, by means of a collection order that can be issued up until the expiration of the third year following that in respect of which the impugned tax is payable.

#### **Sub-section 4 - Penalty concerning invoicing obligations**

**Art.502.-** 1) All persons who are under the obligation to use certified electronic invoicing machines and who sell goods and services without issuing a standard invoice that is drawn up under the conditions defined in Article 481 of this Code, are liable to a penalty equal to five (5) times the amount not invoiced, with a minimum of five hundred thousand (500,000) CFA francs per unissued invoice.

The penalty cannot, under any circumstances, exceed the following amounts, which are defined according to the type of enterprise:

- five hundred thousand (500,000) CFA francs for small enterprises;
- two million (2,000,000) CFA francs for medium-sized enterprises;
- five million (5,000,000) CFA francs for large enterprises.

2) In the event of a repeated breach, the amount of the penalty is equal to ten (10) times the amount for which the standard invoice was not issued, with a minimum of one million (1,000,000) CFA francs per unissued invoice.

In this case, the penalty can be applied cumulatively with an administrative closure of three (3) months pursuant to a decision by the Director General of Taxes.

The penalty cannot under any circumstances exceed the following amounts, defined according to the type of enterprise:

- one million (1,000,000) CFA francs for small enterprises;
- five million (5,000,000) CFA francs for medium-sized enterprises;
- ten million (10,000,000) CFA francs for large enterprises.

For an enterprise whose officers are foreign nationals, these officers will be banned from remaining in the Republic of Benin, cumulatively with the penalties referred to above. The procedure for banning officers from remaining in the country will be implemented at the request of the Finance Minister.

3) The penalties provided for in paragraphs 1 and 2 of this Article are also applicable to all persons who:

- a) effect a transaction and issue a standard invoice for a lower value or quantity;
- b) cause a malfunction in the certified electronic invoicing machine or the electronic invoice system.

4) The suppliers of business invoicing systems and the publishers of software applications who do not comply with the approval obligation provided for in Article 482 of this Code are liable to a penalty of five million (5,000,000) CFA francs. In the event of a repeated breach, the penalty is increased to ten million (10,000,000) CFA francs.

The same penalty is applicable to enterprises that have developed their own electronic invoicing system, without having fulfilled the approval obligation.

5) All modifications of an enterprise's invoicing system or theft of a third party's identity for the purposes of issuing fraudulent or forged standard invoices carry a penalty of one million (1,000,000) CFA francs per invoice, without prejudice to criminal penalties.

6) All breaches not specified in the regulations on certified electronic invoicing machines carry a penalty of one million (1,000,000) CFA francs.

7) The imposition of the penalties provided for in this article does not preclude either the payment of the value added tax that was avoided and the associated penalties, or criminal proceedings being initiated against the perpetrators and their accomplices.

### Section 6 - Other tax penalties

**Art.503.-** 1) All taxpayers who have not complied with the requirements of Articles 21 and 245 of this Code are required to pay a penalty equal to 5% of the amount of the payments made in cash in excess of said threshold.

2) All breaches of a provision concerning a tax, duty or charge that is referred to in this Code and that are not liable to a specific penalty carry a penalty of one hundred thousand (100,000) CFA francs.

3) Any person who, in any way whatsoever, makes it impossible for officers who are empowered to report breaches of tax legislation to perform their duties is punished by a tax penalty of 500,000 CFA francs. This penalty is independent of the imposition of the other penalties provided for by the legislation in force, each time that the extent of the fraud can be assessed.

4) Failure to respond or an incomplete response to the final notice provided for in Articles 542 and 543 of this Code will lead to the imposition, for each fiscal year audited, of a penalty equal to 0.5% of the amount of the transactions concerned by the documents or additional information that were not made available to the tax administration after service of a final notice, with a minimum of ten million (10,000,000) CFA francs per fiscal year.

5) All persons who are required to disclose information upon request pursuant to the provisions of Articles 518 to 524 of this Code and who refrained from so doing are liable to a tax penalty of five hundred thousand (500,000) CFA francs, upon expiration of the time-limit of eight (8) days following the final notice referred to in Article 525 of this Code.

This penalty is increased to one million (1,000,000) CFA francs upon expiration of a time-limit of one (1) month and increased by one hundred thousand (100,000) CFA francs per month or fraction of a month in addition.

6) All natural or legal persons who fail to provide information or who provide inaccurate or insufficient information are liable to a penalty of five hundred thousand (500,000) CFA francs and will be jointly and severally liable for the payment of the taxes owed.

### Chapter 3 - Criminal penalties

#### Section 1 - Definition of the offences

**Art.504.-** Independently of the tax penalties incurred, any person who fraudulently avoided or who attempted to avoid fraudulently the assessment or the total or partial payment of the taxes referred to in this Code, because they deliberately failed to file their return within the stipulated time-limits, or because they deliberately concealed part of the amounts liable to tax, or because they organised their insolvency or impeded the collection of the tax through other practices, or through any other fraudulent practice, is liable to a fine of one hundred thousand (100,000) to two million (2,000,000) CFA francs and a prison sentence of one (1) to five (5) years, or only one of said penalties.

**Art.505.-** The following are liable to the penalties provided for in the preceding article:

- 1° the custodians of funds referred to in Article 657 of this Code who have not paid the entirety of the taxes owed by the persons on account of whom said funds were received, before relinquishing custody thereof;
- 2° third party holders of property or garnishees who have not complied with the notices that were served on them pursuant to Article 632 of this Code;
- 3° any person whatsoever who has withheld any tax, duty or charge and who failed to pay over said tax, duty or charge within the statutory time-limits;
- 4° any person whatsoever who has illegally invoiced value added tax or who has failed to pay over value added tax within the statutory time-limits. Illegal invoicing of value added tax includes, in particular, a non-taxable person including value added tax on an invoice, the invoicing of value added tax for an exempted product, and the application of a rate higher than that provided for by law;
- 5° any person whatsoever who, with a view to obtaining the benefit of tax relief of any kind whatsoever, submitted documents that are false or found to be inaccurate, or made false declarations;
- 6° any person whatsoever who has used their influence, function or social status to impede the assessment of the tax base or the collection of tax for the benefit of third parties or for their own benefit;
- 7° any person whatsoever who, through trespass to the person, threats or concerted action, arranged or attempted to arrange individual or collective refusal of tax;
- 8° any person whatsoever who encouraged the public to refuse or delay the payment of tax;

- 9° natural persons who deliberately broke seals after the closure of premises on account of failure to pay tax;
- 10° any person whatsoever who issued, used or submitted a false receipt for payment or a forged receipt for payment, in order to avoid payment of tax;
- 11° any person whatsoever who keeps improper accounts, either by knowingly failing to enter or arranging for the entry of all or part of the required lines, or by arranging for the entry or knowingly entering inaccurate or fictitious lines, or by not keeping or by destroying before the statutory time-limits the documents that it is obligatory to keep, or by any other means, in particular by appreciably reducing the amounts to be reported.

**Art.506.-** Enterprises that have not paid their taxes within the time-limits stipulated in this Code are liable, independently of the applicable tax penalties, to a fine of between two hundred and fifty thousand (250,000) and one million five hundred thousand (1,500,000) CFA francs.

**Art.507.-** If there is individual or collective opposition to a tax base or to the collection of tax, the penalties provided for in Articles 394 et seq. of the Criminal Code may be applied.

**Art.508.-** 1) All those who have been definitively convicted pursuant to the provisions of the preceding articles are jointly and severally liable, with the person who is legally liable for the payment of the avoided or unpaid tax, for the payment of the tax, as well as for payment of the associated tax penalties.

2) The buyers mentioned in Article 654 of this Code are jointly and severally liable for the payment of the taxes owed by their predecessors. Action will be taken against them in the same manner and they will be liable to the same penalties as the seller, for all unpaid taxes related to the subject of the sale, regardless of the corporate name of the person liable that is stated on the collection order.

**Art.509.-** 1) The provisions of Article 826 of the Code of Criminal Procedure concerning enforcement against the person are applicable to natural persons who have not paid their taxes that have fallen due within the stipulated time-limits.

2) The recommendation for a custodial sentence can only be made to the Public Prosecutor three (3) days after the service of the order to pay.

3) The provisions of this Article are applicable in person to the chief executive officers, directors, managers and, in general, all persons who have the capacity to represent the company against which action is being taken.

**Art.510.-** 1) Any person who is directly or indirectly involved in the audit or collection of the taxes and duties provided for by this Code, who breaches the duty of confidentiality, will be punished by a prison sentence of one (1) to six (6) months and a penalty of one hundred thousand (100,000) to five hundred thousand (500,000) CFA francs.

2) A breach of the duty of confidentiality is where a person who holds confidential information, either due to their status or profession, or on account of an engagement or temporary function, discloses said information other than under circumstances where they are required to or authorised by law.

3) Moreover, the breach of the duty of confidentiality by a tax officer is regarded as gross misconduct that triggers the disciplinary procedures provided for by the general regulation on the status of civil servants.

### Section 2 - Bringing of criminal proceedings

**Art.511.-** 1) Criminal proceedings are initiated in response to a complaint by the Director General of Taxes, with no need, as the case may be, to serve prior notice on the person concerned to complete their return.

2) The offences defined in this Chapter can be proved by any of the legal means mentioned in the Code of Criminal Procedure.

They can be recorded by an official report or in the adjustment proposal.



**Book 5 - Tax procedures**

**Art.512.-** 1) This Book defines the procedures that are applicable to the taxes and duties governed by this Code.

2) Its provisions do not preclude the application of the provisions on mutual administrative assistance that are contained in the international conventions that are binding on Benin.

**Art.513.-** For the application of the provisions of this Book, the civil authorities and law enforcement must aid and assist tax administration officers in the performance of their duties, each time that they are requested to do so.

**Art.514.-** 1) The time-limits expressed in days herein are in calendar days, unless stated otherwise, and the first day is not counted.

2) The periods expressed in months are calculated from one same-numbered day to another.

3) When the date on which a time-limit or the deadline for a filing or payment obligation expires coincides with a non-working day, the date or deadline is extended to the first subsequent working day.

4) For the assessment of the duties provided for in Book 1 of this Code, with the exception of the withholding of the profit-based tax prepayment and in Book 3 of this Code, the taxable base is rounded down to the nearest thousand CFA francs.

5) The amount of the chargeable contributions for each type of tax or duty and that of the incidental expenses are rounded off to the nearest ten CFA francs.

**Art.515.-** Within the meaning of this Book, the term:

- 1° "tax administration" or "administration" means solely the General Tax Directorate;
- 2° "revenue agent" means any officer of the General Tax Directorate who has tax training and at least a rank of agent.

**Part 1 - Control of tax****Chapter 1 - Means of control****Section 1 - Request for information, clarifications and justifications**

**Art.516.-** 1) A revenue agent may ask the taxpayer, verbally or in writing, for the information, clarifications or justifications the agent deems relevant.

If the taxpayer dies, requests may be validly sent to any one of the beneficiaries or signatories of the declaration of estate.

2) If the taxpayer refuses to respond to a verbal request or if the response given to said request is deemed by the revenue agent to be equivalent to a refusal to respond concerning all or part of the points to be clarified, the revenue agent must repeat their request in writing.

3) All written requests must:

- a) state explicitly the points regarding which the revenue agent deems to it necessary to obtain clarifications or justifications;
- b) allow the taxpayer a period of thirty (30) days as from the date of receipt of the request in which to provide their response;
- c) inform the taxpayer of the penalties that are applicable to them in the event of failure to respond or an inadequate response.

## Section 2 - Right of communication

**Art.517.-** 1) All official communication between the tax administration and the taxpayer or any other person referred to by the provisions of this book must be effected using one of the following methods:

- a) a registered letter;
- b) a written instrument or document that is delivered or sent in exchange for an acknowledgement of receipt or administrative release, to the taxpayer, or to any other person referred to by the provisions of this Code, or on the administration's premises;
- c) a written electronic message that complies with the provisions of the legislation on digital technology and that meets requirements equivalent to those for non-electronic written documents. An order of the Finance Minister will determine the rules on the exchange of information in written electronic format between the tax administration and users.

2) All changes in the taxpayer's address, including the email address, must be notified to the tax administration. If no change of address was notified to the tax administration, all communications will be sent to the last known address. If a taxpayer or any other person has no known address, the tax administration will publish, without prejudice to the duty of confidentiality, all the communications concerning said taxpayer or said person in the press.

**Art.518.-** For the assessment, audit or collection of tax, all natural or legal persons, whether Beninese or foreign, are required to respond to all requests by tax administration officers who have the grade of revenue agent or higher, to provide ledgers, registers and other documents, the keeping of which is required by Article 480 of this Code.

With regard to companies and partnerships, the right of communication referred to in the preceding sub-paragraph includes share and bond transfer registers, as well as the attendance sheets at general meetings.

**Art.519.-** The right of communication can be exercised with regard to taxable persons, as well as third parties other than taxable persons, in particular: public officials and judicial officers, public and analogous administrations, enterprises, establishments or organisations that are under the control of the administrative authority, private enterprises,



companies or partnerships, regardless of their form, banks and analogous institutions, insurers, representatives, brokers and intermediaries.

**Art.520.-** 1) The right of communication can be exercised by correspondence or in situ.

2) When the tax administration intends to exercise its right of communication in situ, it is required to send, at the latest, on the date of the initial intervention, advance warning of its arrival.

3) The advance warning must state the nature of the documents that must be made available to the tax administration and expressly state that it involves an exercise of the right of communication, and not an inspection of the accounts.

**Art.521.-** 1) The time-limit granted to the taxpayer to respond to the requests referred to in paragraph 1 of the preceding article is eight (8) days following the date of receipt of the request.

2) The taxpayer's response must be provided in French. If the documents, disclosure of which is requested, are not written in French, a sworn translation into French may be requested.

**Art.522.-** Carriers or drivers who are present in situ must respond to all requests by tax officers who have the rank of revenue agent or higher, to provide all administrative papers and tax documents concerning the products or goods that are subject to specific formalities regarding movement.

**Art.523.-** 1) The public administrations, as well as enterprises that are awarded concession contracts or controlled by the State or the regional authorities, institutions or organisations of any kind that are under the control of the administrative authority, cannot assert the duty of confidentiality against the tax administration's officers, who, in order to assess, audit or collect the taxes provided for by the existing regulations, request that they disclose the internal documents in their possession.

2) The BCEAO cannot assert the duty of confidentiality against the tax administration for information regarding securities account transactions, the granting of credit, foreign currency allocations and transactions with foreign countries. The tax administration may request copies of all documents, in particular statements of account and business correspondence.

3) Primary banks, lending institutions, insurance companies, non-governmental organisations, public officials and judicial officers and all traders cannot assert the duty of confidentiality against the tax administration for information concerning securities accounts transactions, foreign currency allocations and transactions with other countries.

The tax administration may request copies of all documents, in particular statements of account and business correspondence.

**Art.524.-** The judicial authority must inform the tax administration's officers of all information that it may obtain, which could give rise to a presumption that tax evasion has been committed or any practice whatsoever, the result of which is to evade or compromise the assessment or collection of tax, whether a civil or commercial court or a criminal

investigation, even one that has been completed or ended with the case being dismissed.

**Art.525.-** 1) The refusal to disclose the ledgers, evidence and documents to which the right of communication relates must be recorded in an official report, followed by a final notice to the taxpayer concerned.

2) The penalties provided for in Article 503(5) and (6) of this Code for breaches of the obligation to disclose information will be assessed by the Director General of Taxes, included in one or more notices to pay, and immediately payable in full.

### Section 3 - Right of search and seizure

**Art.526.-** 1) For the investigation and reporting of breaches of tax regulations, tax officers with the grade of at least revenue agent who are empowered by the Director General of Taxes to investigate the reasons for these actions, are authorised, merely upon presentation of their credentials, to carry out searches or investigations on professional premises or in homes, where the evidence and documents relating thereto are liable to be kept and to seize said evidence and documents.

2) Search and seizure operations cannot be initiated before six (6) am or after nine (9) pm, unless an exception is expressly granted by the Director General of Taxes. In places that are open to the public, search and seizure operations can be carried out during the establishment's opening times.

3) Tax officers may be accompanied by an investigating police officer, or by a municipal official for the location or their representative, for searches of residences.

4) The search must be carried out in the presence of the occupant of the premises or their representative; if it is impossible for them to be present, two witnesses must be chosen who are not under the authority of the tax administration.

5) Revenue agents may, during the search, seize evidence and documents, regardless of the media on which they are stored.

In the event that the documents to be seized are stored electronically, the taxpayer must, if requested by the tax officers, make a copy thereof forthwith. The taxpayer must also provide documentation concerning the analyses, programming and execution of the processing.

6) At the end of the search and seizure, an official report stating the findings of the operation and any documents seized must be drawn up and signed by the tax officers and by the taxpayer, or their representative. In the event of refusal to sign, this must be mentioned on the official report, the original of which must be provided to the taxpayer or to their representative or to the person who witnessed the search and seizure being performed. If the event of refusal to accept, this must be mentioned in the official report.

7) The information obtained can only be exploited for an inspection of the accounts or ad hoc audit after the evidence or a copy thereof has been returned and an inspection notice sent under the conditions defined by Articles 535 and 538 of this Code.

**Art.527.-** 1) Staff of the General Tax Directorate are empowered, in collaboration with the staff of the General Customs Directorate, to identify goods that are leaving the customs clearance offices, stores and warehouses in which they are stored after completing customs formalities.

They are also empowered, for the exercise of the right of search and investigation, and the right of enquiry, and with the authorisation of the Director General of Taxes, to provisionally close premises, stores and other storage locations of goods that belong to taxpayers who engage in fraudulent activities.

2) Within this framework, the tax officers, with their credentials, will draw up, in situ, a document containing the following information:

- a) the identity of the importer or of the trader;
- b) the identity of the forwarder;
- c) the declaration number of the release for consumption or of the permit for immediate removal;
- d) the nature and the value of the goods;
- e) the duties paid at the customs border.

The document thus drawn up must be dated and signed by the officers who identified the goods or who implemented the closure measures mentioned in paragraph 1 of this Article.

3) Goods identified will be transported to their place of unloading.

4) After the goods are unloaded, the following information must be placed on record:

- a) the identity of the owner of the store or of the warehouse;
- b) the land records references for the store or the warehouse;
- c) the district, the road and door numbers.

#### Section 4 - Right of investigation

**Art.528.-** The right of investigation is an administrative procedure designed to enquire into breaches of the invoicing rules and obligations by which taxable persons for value added tax and other indirect tax purposes are bound.

The right of investigation is a separate procedure from tax audit procedures and makes it possible for the tax administration to perform an unannounced audit on a taxable person.

The right of investigation concerns not only the periods covered by a return, but also those for which the deadline for filing has not yet expired.

**Art.529.-** 1) The right of investigation is exercised by tax officers who at least have the rank of revenue agent or appropriate officers who are empowered by the person responsible for the tax investigations, acting on the authorisation of the Director General of Taxes. The investigating officer must be sworn in and carry credentials.

Where the investigation requires specific technical knowledge, the tax administration may call on experts mandated by the Director General of Taxes.

2) The right of investigation is exercised in situ on the premises of the taxable person or, following a convening notice, in the administration's offices.

3) During the first inspection or convening notice under the right of investigation, a notice of investigation is delivered to the taxable person or to their representative if the taxable person is a legal person.

If these two persons are absent, the notice must be issued to the person who meets with the investigators, and an official report must be drawn up immediately. It must be signed by the administration's officers and by the person who received the notice of investigation. In the event of refusal to sign, this must be mentioned in the official report. A copy of said report must be issued to that person; an additional copy must be sent to the interested party or to their representative.

4) The duration of the in situ investigations under the right of investigation cannot exceed three (3) working days.

**Art.530.-** 1) The investigators have access, during the opening hours of public services, to premises that are used for professional purposes, excluding the parts of these premises that are allocated for use as the private residence, as well as to the land and warehouses. They also have access to means of transport that are used for business purposes and to their payloads.

Investigations may, as an exception and at the request of the Director General of Taxes, take place during the business hours of the taxable person.

2) The investigators may require access to the invoices and accounting documents, as well as the ledgers, registers and business documents that may relate to the transactions that have given rise or are expected to give rise to invoices or obtain a copy thereof, and may make a physical inventory of the assets that are used for business operations.

Where invoices are issued by means of electronic processes, the investigators may also have access to all the information, documents, data, computer processing or information systems, and to the documentation that describes how they are produced.

During the investigations, the investigators may seize evidence and documents, regardless of the storage media used, as well as computer hardware or other equipment that is used for invoicing.

**Art.531.-** 1) Upon completion of the investigation, the investigators will draw up an official report of the breaches identified or the absence of such breaches. The list of documents, a copy of which was issued, must be appended thereto where applicable.

2) This official report must be drawn up after the last in situ inspection or the last convening notice. It must be signed by the investigators, as well as by the taxable person or their representative. In the event of refusal to sign, this must be mentioned in the official report. A copy of said report must be provided to the interested party.

3) The findings of the official report can only be enforced against said taxable person and the third parties concerned by the invoicing through the audit procedure provided for by this part with regard to taxes of all types and the investigation procedure provided for in this section.

**Art.532.-** All obstruction of the right of investigation, in particular refusal to disclose the required documents, trespass to the person against tax administration officers or any other obstruction that could make it impossible for them to exercise the right of investigation, is punished by the provisions contained in Article 503 of this Code.

## Chapter 2 - Forms of control

### Section 1 - Documentary audit

**Art.533.-** 1) The tax administration can audit the returns that are submitted to it by the taxpayer, with a view to assessing the accuracy and fair presentation thereof, in the administration's offices, without sending prior notice.

2) To this end, it may ask the taxpayer for all information, justifications or clarifications concerning the returns filed or documents submitted.

3) Where the request for justification is used for a documentary audit, it must be limited to requesting from the taxpayer solely copies of returns, evidence and supporting documents, the filing of which with the relevant tax centre is mandatory at the time of a return, a formality or the payment of a tax, duty, charge or fee or in order to obtain an exemption or an exemption document.

Requests for supporting documents can only concern one single accounting period. They cannot under any circumstances turn into a request to consult the enterprise's accounts.

4) The tax administration may correct the declarations in compliance with the procedures and guarantees described herein.

**Art.534.-** 1) Taxpayers can ask the tax administration to verify the tax compliance of certain operations that are carried out.

If the tax administration accedes to this request, the audit is carried out on the premises of the tax administration, in accordance with the provisions of the preceding article.

2) The tax administration will inform the taxpayer of the outcome of this verification of each of the operations.

Errors, inaccuracies, omissions or insufficiencies that are identified concerning these matters in the returns filed may be corrected voluntarily by the taxpayer under the conditions provided for in Article 558 of this Code.

3) Absent correction within thirty (30) days following receipt of the response, the tax administration may send an adjustment proposal.

4) If, during an audit, the tax administration deems it necessary to carry out a field audit in order to be able to respond to the taxpayer's request, it must send an audit notice and initiate a procedure in accordance with the provisions of Articles 537 et seq. of this Code. In this case, the documentary audit procedure provided for by this article will cease.

## Section 2 - Spot audits

**Art.535.-** 1) Tax officers who have at least the rank of revenue agent can carry out spot audits that do not constitute an inspection of the accounts.

2) The revenue agent can only visit the site after informing the taxpayer by means of a spot audit notice that was sent to the taxpayer two (2) days beforehand, by registered letter or delivery by hand, with acknowledgement of receipt.

However, the spot audit may start unannounced on the date of delivery of the audit notice, under the conditions provided for in Article 538(2) of this Code.

**Art.536.-** 1) A taxpayer who undergoes a spot audit will benefit from the guarantees provided for by Articles 549 et seq. of this Code.

2) The duration of the field audit cannot exceed three (3) half-days over a period of fifteen (15) days.

3) The adjustments notified as part of a spot audit can only concern taxes that are paid monthly, and taxes on income or on profits, for which the returns are filed during the year of the audit, including the business-use tax and the beverage tax.

4) Where breaches of the obligation to use standard invoices are identified, the reports will be made as stated in Article 484 of this Code.

## Section 3 - Inspection of accounts

### Sub-section 1 - General provisions

**Art.537.-** 1) Tax officers who have at least the rank of revenue agent can audit the accounts and documents held by taxpayers, which are used to justify and verify the taxes and duties.

2) The inspection of the accounts may be limited to one or more specific taxes or concern all the taxpayer's tax obligations, even if, despite not being organised by this Code, they result from a legislative or regulatory text that makes it possible to audit them and take action concerning them under the same conditions as certain categories of taxes.

3) The schedules for accounts inspections are decided by the General Tax Directorate. Taxpayers may ask the tax administration, which is not bound by their request, to initiate a general inspection of their accounts.

**Art.538.-** 1) The auditor can only visit the site after informing the taxpayer by means of an inspection notice that was sent to the taxpayer two (1) days beforehand, by registered letter or delivery by hand, with acknowledgement of receipt.

2) By way of derogation from the provisions of paragraph 1 of this Article, the inspection of the accounts may start unannounced on the date of delivery of the audit notice, under the following conditions:

- a) the inspection must only cover the material review of the available documents, the conditions of pursuance of the business activity, the employee workforce present, the nature of the inventories, the day ledger, and the statement of the prices, excluding all critical analysis of the accounting;
- b) the findings of this initial audit will be recorded in an official report that is drawn up in two original counterparts, then signed by the auditor and the taxpayer; in the event of refusal, specific reference must be made to this in the official report;
- c) the review of the substantive aspects of the accounting can only take place after a period of two (2) days after the date of the initial audit has elapsed.

**Art.539.-** 1) The inspection of the accounts is performed at the registered office of the enterprise or at its principal place of business. In the event that the audit cannot take place in either of these two places, the taxpayer must request in writing that it take place in the offices of their accountant, or on the premises of the tax administration.

2) Field audits cannot last for more than:

- a) three (3) months, for enterprises the annual declared turnover of which does not exceed five hundred million (500,000,000) CFA francs;
- b) six (6) months if this is not the case.

This duration may be extended by six (6) months in the event of particular technical difficulties, if transfer prices are audited or if the procedure for the exchange of information is initiated, as provided for by mutual assistance agreement concerning the assessment, audit and collection of tax, or by bilateral or multilateral agreements on the exchange of information for tax purposes. The extension of field audit work must be notified to the taxpayer at least eight (8) days before the expiration of the first audit period. The notice must be substantiated.

**Art.540.-** During the accounts inspection procedure, revenue agents can:

- 1° examine the transactions shown in the financial accounts used for both private and/or business purposes and ask the taxpayer for all clarifications or justifications concerning these transactions, without this examination and these requests constituting the start of a personal tax audit;
- 2° obtain a copy, within two (2) days, of any receipt, return, payment receipt, contract, or supporting document that is necessary for the performance of their audit activities. The taxpayer will be provided with a receipt for any documents that are handed over.

**Art.541.-** 1) Where the accounts are kept using computerised systems, the audit will cover all the computerised information, data and processing that directly or indirectly contribute to generating the accounting or tax results and to the preparation of the returns that are made obligatory by this Code, as well as the documentation concerning the analysis, programming and execution of the processing.

2) The taxpayer must, in order to do so, fulfil the obligation to provide accounting documents mentioned in Article 480 of this Code by delivering, in electronic form that meets the standards defined by order of the Finance Minister, a copy of the file of account entries defined in Articles 14 et seq. of the OHADA Uniform Act on accounting law and financial reporting.

Failure to provide the file of account entries carries the penalties provided for in Article 500 of this Code.

3) The tax administration may carry out sorting and filing operations, as well as all processing and calculations, in order to ensure the consistency between the copy of the entries that are used to generate the accounting result and the taxpayer's tax returns.

[NB - See Order n°1085/MEF/CAB/SGM/DGI/DLC/159SGG20 of 23 April 2020 that defined the rules and standards for presenting the File of Account Entries ("FAE")]

## Sub-section 2 - Provisions that are specific to transfer prices

**Art.542.-** 1) When, during an inspection of the accounts, the tax administration gathers evidence that gives reason to presume that an enterprise effected an indirect transfer of profits, within the meaning of the provisions of Article 45 of this Code, it may ask said enterprise for information and documents that state:

- a) the nature of the relations that fall within the scope of the provisions of Article 45 of this Code, between said enterprise and one or more enterprises that are operated outside of national territory or companies or groupings that are established outside of the Republic of Benin;
- b) the method for determining the prices of the industrial, commercial or financial transactions it undertakes with the enterprises, companies or groupings referred to in section (a) and the data which shows, as the case may be, the consideration granted;
- c) the activities pursued by the enterprises, companies or groupings referred to in section (a), which are connected to the transactions referred to in section (b) of this paragraph;
- d) the tax treatment reserved for the transactions referred to in section (b) and effected by the enterprises it operates outside of Benin or by the companies or groupings referred to in section (a), in which it holds, directly or indirectly, the majority of the capital or voting rights.

2) The requests referred to in paragraph 1 must be precise and state explicitly, by type of activity or by product, the country or the territory concerned, the enterprise, the company or the grouping concerned, as well as, where applicable, the amounts in question. They must, moreover, specify to the audited enterprise the time-limit within which it may respond. This time-limit, which is thirty (30) days, may be extended in response to a substantiated request, but cannot exceed in total a duration of forty-five (45) days.

3) If the enterprise does not provide an adequate response, the tax administration will send the enterprise a final notice to complete its response within a time-limit of eight (8) days, and state the additional information that the administration requires. This final notice must reiterate the applicable penalties in the event of failure to respond.

[NB - See:

- Order n°0121/MEF/DC/SGM/DGI/DLC/016SGG20 of 24 January 2020 that defines the contents of documentation on transfer prices
- Order n°0119/MEF/DC/SGM/DGI/DLC/015SGG20 of 24 January 2020 concerning the contents of the country-by-country report]

**Art.543.-** 1) All legal persons established in the Republic of Benin who meet one of the conditions referred to in the following paragraph must make available to the tax administration, on the date on which the inspection of the accounts starts, documentation that justifies the transfer pricing policy applied for the transactions of all types effected with



enterprises established abroad, with which it has a relationship of dependency or control within the meaning of Article 45(2) of this Code.

2) The documentation obligation applies to all legal persons:

- a) who have annual turnover excluding tax or gross assets that exceed or are equal to one billion (1,000,000,000) CFA francs; or
- b) at the close of the fiscal year, who directly or indirectly hold more than one-half of the capital or voting rights of a company that is established or incorporated in the Republic of Benin or outside of Benin, which meets the condition referred to in section (a) of this paragraph; or
- c) more than one-half of the capital or voting rights of which is held, at the close of the fiscal year, directly or indirectly, by a company that meets the condition referred to in section (a).

3) The documentation must include general information on the group of related enterprises and specific information on the audited enterprise.

The contents of this documentation are defined by an order of the Finance Minister. This documentation does not substitute the supporting documents that are required for each transaction.

4) If the required documentation is not made available to the tax administration on the date on which the inspection of the accounts starts, or is only provided partially, the tax office will send the legal person referred to in paragraph 1 of this Article a final notice to produce or complete said documentation within a time-limit of eight (8) days, and state the nature of the expected documents or additional information.

**Art.544.-** Furthermore, the penalties provided for in Article 503 of this Code, the tax bases concerned by the request or the final notice will be assessed by the tax administration on the basis of the information at its disposal.

#### Section 4 - Adversarial personal tax audit

**Art.545.-** 1) Under the conditions provided for herein, the tax administration may carry out an adversarial personal tax audit of natural persons with regard to taxes and duties for which they are personally liable, regardless of whether or not their tax residence is in the Republic of Benin, where they have obligations in respect of said taxes and duties in that country.

The tax administration will check the consistency between, on the one hand, the income declared, and, on the other hand, the net worth, cash position and lifestyle characteristics of the taxpayer.

2) The adversarial personal tax audit will take place on the administration's premises. The tax administration will interview the persons concerned where it deems this relevant or when they ask for oral explanations, and will draw up an official report of this.

3) An adversarial personal tax audit cannot last for a period of more than six (6) months following the receipt of the audit notice. This period is extended to one year in the event of the discovery, during the audit, of an undeclared activity within the meaning of Article 575 of this Code.

This period will be extended by the time-limit granted, as the case may be, to the taxpayer and, at their request, to answer requests for clarifications or justifications for the part that exceeds the thirty (30) days provided for in Article 516 of this Code.

It will also be extended by the time-limit mentioned above and by the timeframes that are necessary for the tax administration to obtain the statements of account where the taxpayer did not exercise their option of disclosing them within thirty (30) days of the tax administration's request or in order to receive the information requested from the foreign authorities where the taxpayer may have received income abroad or directly from a foreign country.

**Art.546.-** 1) An adversarial personal tax audit cannot be initiated without the taxpayer having been informed thereof by the sending or delivery of an audit notice.

2) The audit notice must be sent to the taxpayer at the home or workplace, at the registered office of the company in which they hold shares or equity interests or to any address where they are the owner of real property.

**Art.547.-** 1) During an adversarial personal tax audit procedure, the tax administration can examine the transactions shown in the financial accounts used for both private and/or business purposes and ask the taxpayer for all clarifications or justifications concerning these transactions, without this examination and these requests constituting the start of an accounts inspection procedure.

2) The tax administration may take into account, in each of these procedures, observations from the review of the accounts or responses to the requests for clarification or justifications, which were made as part of another procedure, in accordance with those rules alone that are applicable to said other procedure.

**Art.548.-** 1) When, during an adversarial personal tax audit, a clear discrepancy is identified between the lifestyle of the audited taxpayer and their declared income, the total amount of their personal income tax cannot be less than a reference tax that is determined on basis of lifestyle characteristics.

2) For the application of paragraph 1 of this Article, personal tax should be understood to mean the tax on business profits, tax on income from investments, tax on income from real estate and tax on wages and salaries that were paid in respect of a given year.

3) The reference tax is calculated by applying the rate of the tax on business profits to the lifestyle characteristics that are assessed on a flat-rate basis as follows:

Lifestyle characteristics	Corresponding flat rate annual income
1) Primary and secondary residences in the Republic of Benin or outside of Benin, maintenance and occupancy expenses. This value is increased if the residence has swimming pools: • per swimming pool	Three times the rental value  XOF 1,000,000
2) Caretaker, cook, gardener or other	XOF 400,000 per person

3) Passenger automotive vehicles: <ul style="list-style-type: none"> <li>• a) with a power rating for tax purposes of more than 20 CV per vehicle</li> <li>• b) with a power rating for tax purposes of between 15 and 20 CV per vehicle</li> <li>• c) with a power rating of less than 15 CV per vehicle</li> </ul> <p>These values are adjusted by a deduction of 20% after one year of use and another 10% per year for the four following years, but nevertheless may not be less than XOF 500,000. However, the base thus determined must be reduced by half, for vehicles that are exclusively used for business purposes.</p>	XOF 3,000,000  XOF 2,500,000  XOF 2,000,000
4) Pleasure sailing craft <ul style="list-style-type: none"> <li>• a) up to three tonnes</li> <li>• b) per additional tonne, up to ten</li> <li>• c) in excess of ten</li> </ul>	XOF 200,000 XOF 5,000 XOF 100,000
5) Fixed-motor outboard pleasure craft <ul style="list-style-type: none"> <li>• for the first 20 horsepower</li> <li>• per additional horsepower</li> </ul>	XOF 300,000 XOF 20,000
6) Race horses: <ul style="list-style-type: none"> <li>• a) per thoroughbred horse</li> <li>• b) per half-blood horse</li> <li>• c) per local horse</li> </ul>	XOF 1,500,000 XOF 1,000,000 XOF 500,000
7) Private aircraft	XOF 20,000,000
8) Foreign travel: the income to be declared will depend on the cost and duration of the stay	Actual per diem expenses
9) Subsistence expenses	Three times the statutory minimum wage
10) School fees for children enrolled in foreign establishments	Actual expenses

The lifestyle characteristics are those from which the taxpayer benefitted during the year(s) for which the income is being reviewed.

The rental value to be used for primary or secondary residences is the actual or estimated rental value.

4) In the event of the application of the provisions of this Article, the tax administration will take into account the income that is expressly exempted from tax that the audited taxpayer apparently received.

### Section 5 - Taxpayer's guarantees

**Art.549.-** Audited taxpayers benefit from the following guarantees:

- 1) The inspection or spot audit notice must contain the following information:
  - a) the nature of the audit;
  - b) the taxes, duties and charges that are the subject of the audit, or the general nature of the audit;

- c) the period concerned, or reference to the fact that the audit covers the period that is not time-barred;
- d) the date and time of the first session of audit work by the auditor in the enterprise;
- e) in the event of an unannounced audit, the wording of Article 538(2) of this Code;
- f) the surnames, first names and signatures of the auditor(s) or those of the head of department.

2) The taxpayer must be informed, as from the start of the inspection or audit, that they have the option of being assisted by a counsel of their choice during the audit operations, or in order to discuss the adjustment proposals and respond thereto.

3) Where there are plans to extend the inspection to a period or a tax or duty not mentioned in the initial notice, the auditor must inform the taxpayer by an additional notice two (2) days beforehand.

4) The revenue agents who carry out the audit or the inspection must be sworn in and carry their credentials.

Where an inspection or an audit requires specific technical knowledge, the tax administration may call on the technical advice of experts mandated by the Director General of Taxes.

The tax administration may also, as part of the exercise of its right of audit, intervene jointly with the customs administration or call on international experts under agreements to which the Republic of Benin is party.

5) The information or clarifications provided in writing to the taxpayers during an inspection or at any other time are binding on the tax administration. If it is found that an error was made to the detriment of the treasury, this error cannot be corrected with retrospective effect.

**Art.550.-** The tax administration cannot apply any adjustments concerning a period that was previously reviewed by means of a field audit, other than to correct mistakes or omissions that are identified solely on the basis of a review of the case.

**Art.551.-** The taxpayer who formally or tacitly accepts the adjustments referred to in Article 554 of this Code retains the right to make a claim against the tax, after its collection is notified; however, the burden of proof will be on the taxpayer.

**Art.552.-** 1) The end of the field audit operations must be recorded in a summary that shows the points with which the taxpayer agrees and disagrees.

2) This meeting will give rise to an official report on the close of the audit prepared by the auditing officers, which will state:

- a) the names and titles of the auditing officers;
- b) the name or the corporate name of the audited taxpayer, their unique tax identification number and their address, as well as, where applicable, the name of the counsel who assisted them;
- c) the date of the first field audit work;
- d) the date of the summary meeting;
- e) the main tax points that were discussed with the taxpayer and the list of the documents that the taxpayer did not provide during the inspection.

3) The official report must be signed by the auditing officers, as well as by the audited taxpayer or their representative; in the event of refusal to sign, this must be mentioned in the official report. A copy of the official report must be provided to the interested party.

## Chapter 3 - Procedures to adjust tax amounts

### Section 1 - Adversarial adjustment procedures

#### Sub-section 1 - Procedure for adversarial adjustment following an audit

**Art.553.-** 1) When the tax administration identifies an insufficiency, inaccuracy, omission or concealment in the data used to calculate taxes, duties, charges, fees or any amounts whatsoever that are payable pursuant to this Code, the corresponding adjustments are applied by means of the adversarial procedure, under the conditions defined below.

The standard adversarial adjustment procedure is that which is implemented when the taxpayers have fulfilled their filing and accounting obligations.

2) The adversarial procedure is not applicable:

- a) for matters involving direct taxes levied for the benefit of local authorities or various organisations, with the exception of the business-use and beverage taxes;
- b) for an estimated assessment procedure.

**Art.554.-** 1) The tax administration will send the taxpayer an adjustment proposal that must be substantiated so as to enable the taxpayer to state their observations or make known their acceptance within thirty (30) days as receipt of the notice.

2) If an adjustment is contemplated following a field audit, notice of said adjustment must be served within:

- two (2) months of the completion of the accounts inspection;
- fifteen (15) days of the completion of the spot audit.

3) Notification of the adjustment interrupts the limitation period to which the tax administration was subject and replaces said period with the limitation period under ordinary law.

4) The lack of a response from the taxpayer within the time-limit of thirty (30) days will be regarded as tacit acceptance of the adjustments.

5) The taxpayer who formally or tacitly accepts the adjustments retains the right to make a claim against the tax, after its collection is notified; however, the burden of proof will be on the taxpayer.

**Art.555.-** 1) When the tax administration receives observations from the taxpayer following an adjustment proposal, it is required to confirm the adjustments it intends to maintain within a time-limit of two (2) months of the date of receipt of said observations. If not, the observations made by the taxpayer will be deemed to have been accepted in full.

This time-limit may be expressly extended by a new period of one (1) month by the tax administration.

2) Where the tax administration rejects the taxpayer's observations, the tax administration's response must be substantiated.

**Art.556.-** 1) Where the disagreement persists concerning points of fact, it may be brought before the Tax Commission, at the taxpayer's request. Said Board has authority to:

- a) examine disagreements between the tax administration and taxpayers who are subject to the composite business tax, concerning the base for said tax;
- b) examine disagreements concerning points of fact that may give rise to confirmed adjustments, following adversarial procedures;
- c) examine facts that may be taken into account when analysing points of law;
- d) determine whether an act of management was abnormal or whether facts constitute an abuse of right.

The Tax Commission does not have authority to examine disagreements that result from the tax administration implementing an estimated assessment procedure.

2) Matters must be referred to the Tax Commission within five (5) days of receipt of the adjustment confirmation. Referring a matter to the Commission will suspend the adjustment procedure until the Commission has rendered its decision.

3) The Commission's decision must be rendered within a time-limit of thirty (30) days as from receipt of the petitioner's referral letter.

The Commission's opinion is not binding on parties in disagreement. However, the burden of proof will be on the party that does not accept the opinion rendered by the Commission.

4) The Commission's opinion will be notified by the Commission secretariat to the taxpayer and to the authority that carried out the audit. Within a time-limit of eight (8) days of receipt thereof, the authority must inform the taxpayer of the figure it intends to use as the basis of assessment. A collection order will then be issued.

5) If the tax proposed by the revenue agent corresponds to the Commission's opinion, the person liable will retain the right to submit a request for reduction or relief via a contentious claim, with the burden of proof being on said person to provide all the evidence, whether accounting or otherwise, to determine the figure that should in fact be used as the basis of assessment.

If this is not the case, the burden of proof will be on the tax administration if the basis of assessment used to compute the tax exceeds that determined by the Commission.

6) If the Commission's opinion is not rendered within the aforementioned time-limit of thirty (30) days, the tax administration will continue the procedure and proceed with the collection of the confirmed taxes.

7) The provisions on the composition and functioning of this Commission will be determined by an order of the Finance Minister. The non-civil service members of the Commission appointed by the various legally constituted bodies and organisations will sit on the Commission for a non-renewable term of office of two (2) years. The civil service members of the Commission designated by their structures will sit on the Commission for a two (2)-year term of office that can be renewed once.

[NB - See order n°1502/MEF/DC/SGM/DGID/DLC//SLD of 10 June 2014 on the composition and functioning of the Tax Commission]

**Art.557.-** 1) In the event of opposition to an individual or collective audit, of refusal to disclose or of a lack of accurate accounting with evidentiary value, the adversarial procedure may be abandoned and the tax administration may levy taxes on the taxable amounts by means of the estimated assessment procedure, using all the information in its possession.

2) Individual or collective opposition to an audit must be recorded in official reports drawn up by the auditors and possibly by the law enforcement officers who are acting as investigating police officers.

### Sub-section 2 - Voluntary adjustment

**Art.558.-** 1) A taxpayer who is acting in good faith and who wishes to rectify an omission or correct a mistake that led to missing amounts in the figures used as a basis to compute the tax they owe, may contact the relevant departments of the tax administration with a view to submitting the appropriate amended returns to them.

2) This specific procedure is only applicable if:

- a) the taxpayer is not undergoing any adjustment procedure concerning the points that are subject to voluntary adjustment;
- b) the taxpayer has not received an audit notice.

3) The taxpayer must immediately pay the amounts owed, plus a penalty of 10%.

### Sub-section 3 - Valuation of real property

**Art.559.-** 1) The tax administration may correct the price or the valuation of real property or of a right in rem that was used as a basis for the collection of a tax where said price or said valuation appears to be lower than the market value of said property.

2) The corresponding adjustment must be effected in accordance with the adversarial adjustment procedure; the tax administration is required to provide proof of the insufficiency of the prices expressed and of the valuations provided in the instruments or declarations.

3) Where the disagreement concerning the valuation of real property involves at least five million (5,000,000) CFA francs, the taxpayer may submit the dispute to the Conciliation Commission established by Article 560 below, with a view to determining the taxable value.

**Art.560.-** 1) A Conciliation Commission is established that is required to render an opinion on the market value of real property or of a right in rem that is undergoing a change of ownership, and that is located or registered in the Republic of Benin.

2) The taxpayer must refer the matter to the commission within thirty (30) days of receipt of the adjustment proposal that was sent by the tax administration.

The referral will interrupt the current adjustment procedures, but only with regard to the contested taxes.

3) The commission must render an opinion within two (2) months of the date on which the matter was referred to it. This opinion must be notified by registered letter or administrative instrument within eight (8) days of being rendered.

4) The party that does not conform to the opinion of the Conciliation Commission will bear the burden of proof in the event of subsequent litigation.

5) The composition and the functioning of the Conciliation Commission will be defined by a regulation.

**Art.561.-** 1) For a period of three (3) months, as from the date of the registration in the Republic of Benin of a conveyance, the tax administration can exercise, for the benefit of the treasury, a pre-emptive right to the real property, rights in rem, going concerns or clientele, leasehold right or for the benefit of a lease promise concerning all or part of a property, the sale price of which is insufficient in the administration's opinion, by offering to pay the successors-in-interest the amount of said price, increased by one-tenth.

2) This right is exercised with the authorisation of the Finance Minister, but without the authority having to justify this authorisation.

3) It will result from notice being served on the purchaser, either at the address for service elected in the instrument, or, if necessary, on the person who signed the deed of purchase on their behalf, by an unappealable extrajudicial instrument. Similar notice must be served on the seller and on the land records office for the location of the properties if the properties have been registered or are in the process of being registered.

The property that is the subject of said extrajudicial instrument immediately, *ipso facto*, becomes private State property.

All rights to the pre-empted properties, which are granted by the purchaser who was evicted prior to the exercise of the pre-emption, are deemed never to have existed. Those that have been registered in the land records will be stricken.

The expenses for the exercise of the pre-emptive right will be charged to the State's budget.

#### **Sub-section 4 - Prevention of abuses of right and management irregularities**

**Art.562.-** 1) Transactions that are simulated or that seek the benefit of literal application of texts or decisions that is at odds with the aims of their authors, for the sole purpose of avoiding or reducing the tax burdens that the interested party would normally have borne, if these transactions had not been effected, are not enforceable against the tax administration.

2) The tax administration has the right to accord the disputed transaction its true classification.

3) It is the tax administration's responsibility to provide proof of the simulated nature of the information that is called into question or of the taxpayer's intent to avoid or reduce tax.



4) In the event of a disagreement concerning the adjustments notified in accordance with the provisions of this Article, the taxpayer has the right to submit a claim under the conditions and in the manner provided for by this book.

**Art.563.-** 1) The tax administration can refuse all expenses or losses paid by an enterprise that are not associated with normal management or that were not incurred in the direct interest of the enterprise. The tax administration can also add back to the taxable profits all income that should have been generated through normal management, but which was not collected.

2) The burden of proof of the irregular nature of the management is on the tax administration.

## Section 2 - Estimated assessment procedure

**Art.564.-** The tax administration will, of its own initiative, determine the tax bases of taxpayers who:

- 1° did not submit, within the statutory time-limit, the returns they are required to file or filed a return for which sufficient supporting evidence was not provided, without prejudice to the adjustment provided for in Article 565 below;
- 2° failed to respond to the requests for clarifications or justifications or to provide documents, disclosure of which is provided for by this book, within the statutory time-limits;
- 3° within the time-limit of thirty (30) days, did not respond to the tax administration's request for them to appoint a representative in the Republic of Benin;
- 4° did not keep proper accounts or kept non-compliant accounts or accounts with no evidentiary value;
- 5° changed their personal address or the address of their principal establishment, without informing the relevant tax authority of this;
- 6° carry on an undeclared activity within the meaning of Article 575 of this Code;
- 7° obstructed a tax audit;
- 8° were issued with an official report on the spot.

**Art.565.-** 1) The estimated assessment procedure is a non-adversarial procedure, which is only applicable if the taxpayer did not bring their situation into compliance within eight (8) days of receiving a final notice.

2) However, there is no requirement to serve said final notice:

- a) if the taxpayer frequently changes their place of residence or principal establishment;
- b) if the taxpayer has transferred their activity abroad, without filing the declaration of their results or of their non-commercial income;
- c) if the taxpayer did not make themselves known to the tax authorities;
- d) if a tax audit could not be carried out on account of the taxpayer or third parties;
- e) when the tax administration has drawn up an on-the-spot assessment notice for blatant tax fraud, under the conditions provided for in Article 568 of this Code, in respect of the year or the fiscal year during which said formal record was drawn up;
- g) for value added tax matters.

**Art.566.-** The tax can only be computed during a period of fifteen (15) days following the notification of the tax base to the taxpayer.

**Art.567.-** The implementation of the estimated assessment procedure against the taxpayer means that the taxpayer is denied the possibility of going before the Tax Commission.

In the event of a disagreement with the revenue agent, the taxpayer who undergoes the estimated assessment procedure can only obtain, via contentious proceedings, relief from or a reduction of the amount charged to them, by providing proof of the excessive nature of their tax burden.

### Section 3 - Blatant tax fraud

**Art.568.-** 1) When, as part of accounts inspection or spot audit procedures, as well as for the right of search and seizure, for a taxpayer who carries on a professional activity and in respect of the period during which one of the filing obligations linked to said activity is not yet outstanding, at least one of the following events is identified, tax administration officers with a rank of revenue agent or higher, who are in possession of their credentials, may issue an on-the-spot assessment notice for blatant tax fraud to the taxpayer:

- 1° the pursuance of an activity that the taxpayer did not declare to a tax authority, unless, in respect of a prior period, the taxpayer fulfilled one of their filing obligations;
- 2° the issuance of invoices that do not correspond to the delivery of a good or the performance of a service, or of invoices for deliveries of goods in respect of which value added tax cannot be deducted in any way or the recognition of such invoices that were received;
- 3° practices that are liable to render the accounting devoid of evidentiary value, namely:
  - a) repeated commercial transactions without invoices that are not recognised in the accounts;
  - b) the use of accounting or cash register software and fraudulent procedures that are liable to cause concealment of the turnover generated;
  - c) imports of goods under false identities;
  - d) holding inventories of materials or goods with no purchase invoices.

2) The on-the-spot assessment notice for blatant tax fraud must be signed by the tax administration and by the taxpayer. If the event of refusal to sign, this must be mentioned in the official report.

The original of the assessment notice will be kept by the tax administration and a copy notified to the taxpayer.

3) These operations do not constitute an accounts inspection within the meaning of Article 537 of this Code.

**Art.569.-** 1) The on-the-spot assessment notice for blatant tax fraud makes it possible to carry out the precautionary attachments mentioned in Articles 620 et seq. of this Code.

2) If an on-the-spot assessment notice for blatant tax fraud is issued, the tax administration may, for the computation of the amount mentioned in Article 570 below:

- a) use the information collected during the procedure provided for in Article 568 above;
- b) base its position on data and information obtained from third parties, pursuant to Articles 517 et seq. of this Code.

3) In order to determine the amount mentioned in Article 570 below, the tax administration is entitled to consult in situ the registers and documents of all types, in particular those that must be kept pursuant to this Code and the OHADA Uniform Act concerning general commercial law. To this end, the tax administration can obtain or make a copy of all relevant documents, using all methods and all storage media.

4) An official report of the operations carried out must be drawn up. It must be signed by the tax administration and by the taxpayer. If the event of refusal to sign, this must be mentioned in the official report. The original of this official report will be kept by the tax administration and a copy notified to the taxpayer forthwith.

**Art.570.-** The tax collection officer may, by way of derogation from the provisions of Article 595 of this Code, carry out precautionary attachments to the extent of the amount mentioned in the official report, which cannot exceed:

1) For taxes on income or on profits, the result of multiplying the amount of the turnover excluding value added tax that was received in respect of the year or the fiscal year for which no filing obligation is outstanding, up to the date of the on-the-spot assessment notice for blatant tax fraud, less a deduction of 70%, which represents the charges and expenses, by the rates stipulated for the calculation of the tax, with no reduction. This result must be reduced by the total quarterly instalments that were paid under the conditions provided for in Article 51 of this Code.

2) For value added tax, the result of multiplying the rate of tax in force by the turnover base excluding value added tax that was received or reconstituted in respect of the current period, for which no filing obligation is outstanding, up to the date of the on-the-spot assessment notice for blatant tax fraud, less an amount of tax that is deductible under the conditions stipulated in Articles 243 et seq. of this Code.

3) For the withholdings that are to be applied in respect of the tax on wages and salaries, if no data can be obtained in situ, an amount equal to 15% of the turnover excluding value added tax that was received or reconstituted in respect of the current period, for which no filing obligation is outstanding, up to the date of the on-the-spot assessment notice for blatant tax fraud, after a deduction of 80%.

The above taxes will carry penalties at the highest rate provided for in Article 486 of this Code.

**Art.571.-** 1) The blatant tax fraud procedure may be suspended at the taxpayer's written request if the taxpayer proposes to bring their tax situation into compliance with regard to their filing obligations and to immediately pay the taxes that are owed in respect of the period referred to in Article 568 of this Code, plus a 20% penalty and the interest on arrears provided for in Article 488 of this Code. Under no circumstances can the compliance remediation lead to the loss of taxes to be received of more than 50% of the amount that the blatant tax fraud procedure would have triggered.

2) Litigation concerning the instruments for this procedure will be reviewed and judged in accordance with the provisions of Articles 583 and 642 of this Code.

## Chapter 4 - Limits on the right of audit

## Section 1 - Limitation periods

**Art.572.-** 1) Total or partial omissions that are identified in the tax base, underreporting, inaccuracies or taxation errors can be corrected by the tax administration under the conditions and within the time-limits provided for below.

2) The tax administration's right of adjustment is exercised:

- a) for direct taxes, until the end of the third year which follows the year in respect of which the tax is payable;
- b) for indirect taxes, until the end of the third year which follows the year during which the tax became chargeable;
- c) for registration duties and similar taxes:
  - during a period of three (3) years as from the date of the registration of the instrument or of a declaration which is sufficient evidence of the chargeability of said duties, without it being necessary to undertake subsequent research;
  - for twenty (20) years as from the date of registration for failure to include property in a declaration of estate;
  - for twenty (20) years as from the date of death, for undeclared estates.

3) The tax that is assessed under this article must be computed in accordance with the rules in force on 1 January of each of the years to which it applies. Said tax will trigger, as applicable, the penalties provided for by the rules on the tax they concern.

**Art.573.-** Notwithstanding the provisions of the preceding article, an accounts inspection may go back one or more fiscal years beyond the time-barred period:

- 1° where these fiscal years resulted in a loss, if the losses generated in respect of a fiscal year can be carried over and offset against the profits of the first non-time barred fiscal year, for which they constitute expenses;
- 2° where these fiscal years show a value added tax credit that is carried over to the first declaration of the non-time barred period.

**Art.574.-** Even if the adjustment periods provided for in Article 572 of this Code have expired:

- 1° all errors committed, either concerning the nature of the applicable tax, or the place of taxation regarding any one whatsoever of the taxes and duties referred to above, may be corrected until the expiration of the year following that of the decision that granted relief from the initial tax;
- 2° all omissions or insufficient tax revealed by proceedings before the criminal courts can be corrected until the expiration of the year following that of the decision that closed said proceedings.

**Art.575.-** 1) When the tax administration discovers that a taxpayer engaged in fraudulent practices, the right of adjustment can be exercised until the end of the sixth year following that in respect of which the tax is payable.

This time-limit extension is applicable to the perpetrators of the practices, their accomplices and, as applicable, to the persons on behalf of whom the fraud was committed.

2) Fraudulent practices are deemed to occur, within the framework of this Article, solely with respect to the events of the actual fiscal year of the undeclared activity.

An undeclared activity is deemed to be pursued when the taxpayer has not filed, within the statutory time-limit, the returns they were required to complete or if the taxpayer engaged in an unlawful activity.

**Art.576.-** 1) When the tax administration, during the initial adjustment period, asked the relevant authority of another State or territory for information concerning a taxpayer, it may correct the omissions or underreporting of tax in connection with said request, even if the initial adjustment period has elapsed, until the end of the year that follows the year in which the response is received and, at the latest, until 31 December of the third year following that in respect of which the initial adjustment period elapsed.

2) This article applies to the extent that the taxpayer was informed of the existence of the request for information within the time-limit of sixty (60) days following the sending thereof, as well as of the receipt of the response from the relevant authority of the other State or territory within the time-limit of sixty (60) days following receipt thereof by the tax administration.

**Art.577.-** The benefit of Article 572 of this Code cannot be claimed by enterprises that are creditors of the State, whose returns filed in respect of the year during which their oldest claim arose and in respect of subsequent years are still verifiable, for as long as said claim remains due.

## Section 2 - Advance tax ruling

**Art.578.-** 1) The tax administration may issue an advance tax ruling that sets out the administration's position concerning the interpretation of a tax law or the application of tax legislation to a situation described by a taxpayer.

2) The application must be submitted, as appropriate:

- a) either, before the expiration date of the time-limit for the taxpayer to file their return;
- b) or, if there is no filing obligation, before the payment date of the tax concerned.

3) The advance ruling application must be sent in writing to the Director General of Taxes and contain the following information:

- a) the name and address of the applicant;
- b) an accurate, complete and fair presentation of the situation that is submitted to the tax administration;
- c) the exact issue with regard to which the taxpayer wishes to obtain the tax administration's position;
- c) the tax law on the basis of which the applicant is consulting the tax administration so that it adopts a position and, to the extent possible, the same interpretation as the applicant.

4) In the event of an incomplete application, the tax administration may ask the applicant to provide it with additional information.

5) The tax administration must respond within a time-limit of three (3) months following receipt of the application or, if the application is incomplete, following receipt of the additional information requested.

6) The advance tax ruling obtained regarding the taxpayer's situation is enforceable against the tax administration if the following three conditions are met:

- a) the taxpayer follows the position or the instructions notified by the tax administration;
- b) the taxpayer is acting in good faith;
- c) the taxpayer's situation is identical to that with regard to which the tax administration adopted a position.

7) The guarantee provided for in the preceding sub-paragraph will cease if:

- a) the taxpayer's situation is no longer identical to that which they presented in their application;
- b) the legislation applicable to the taxpayer's situation changes;
- c) the tax administration alters its assessment of the situation that was presented to it by the taxpayer.

The prior assessment is no longer valid as from the date on which the taxpayer was informed of this change, and only for the future.

8) The advance ruling may take the form of an agreement with the taxpayer on the determination of the arm's length price for one or more transactions, in accordance with the provisions of Article 45 of this Code.

An agreement approved by the tax administration is enforceable against it in respect of the fiscal year during which the approval was given, and for the following three (3) fiscal years.

The tax administration reserves the right to revoke this approval if it is found that the agreement was entered into on the basis of incorrect or incomplete information.

### Section 3 - Duty of confidentiality

**Art.579.-** All persons who, as part of their duties or responsibilities, are required to be involved in the computation, collection or disputation of the taxes and duties referred to in this Code are bound by a duty of confidentiality under the terms of Article 510 of this Code, and liable to the penalties provided for in said Article.

**Art.580.-** 1) Notwithstanding the provisions of the preceding article, the tax administration may exchange information with:

- a) the directorates in charge of customs, the treasury and government accounts, statistics and all other financial administrations of the State;
- b) the BCEAO;
- c) the regional authorities, with a view to the assessment of local taxes.

2) The tax administration cannot, however, provide information that is covered by commercial, industrial or professional confidentiality, or of which the disclosure would be liable to threaten security or public order.

**Art.581.-** 1) By way of derogation from the provisions of Article 579 of this Code, the tax administration cannot assert the duty of confidentiality:

- a) against an investigating magistrate who questions it on matters that are the subject of a standard complaint that was filed by the tax administration against a party liable to the payment of tax and that led to the opening of an investigation;
- b) against the officers who are responsible for investigating, pursuing and prosecuting offences against customs, economic, pricing and social security legislation,
- c) against mining department officers, concerning the situation of mine operators;
- d) against the Tax Commission, which is referred to in Article 556 of this Code;
- d) against the Conciliation Commission referred to in Article 560 of this Code;
- f) against the tax administrations of the States that have a reciprocal agreement with the Republic of Benin, in connection with a procedure initiated against an identified taxpayer.

2) The information provided must only concern the taxpayers who are directly concerned by the requests made by the persons listed in paragraph 1 of this Article.

## Chapter 5 - Consequences of irregularities in the taxation procedure

**Art.582.-** 1) The following constitute irregularities that will void the procedure:

- a) failure to issue notice of a field audit beforehand;
- b) failure to include in the audit notice the information provided for in Article 549 of this Code;
- c) failure to include in the closing official report the information provided for in Article 552 of this Code;
- d) failure to comply with the time-limit stipulated between receipt of the audit notice and the start of the inspection operations;
- e) improper overrun of the time-limits for field audits or personal tax audits;
- f) failure to comply with the time-limits between the completion of a field audit and the sending of the adjustment notice;
- g) the renewal by the tax administration of a field audit that has already been completed for a given tax or group of taxes and for a given period, unless new evidence emerges.

Where the aforementioned irregularities are identified, they trigger the annulment of the taxes of all types claimed from the taxpayer and preclude the tax administration from proceeding with new adjustments in respect of the same taxation period for the same taxes, duties and charges.

2) The following constitute partial irregularities, which trigger the annulment of those points alone of an adjustment that are concerned:

- a) the inspection of taxes, duties, charges or periods, the review of which is not provided for in the inspection notice;
- b) failure to state in the notices the reasons in law or in fact that are the basis of the adjustments.

3) The irregularities identified in the procedure, other than those mentioned in paragraphs 1 and 2 of this Article, can be corrected by the tax administration in accordance with the right of adjustment.

Absent correction, they will trigger the cancellation of the penalties and penalty tax, with the exception of interest on arrears.

4) Concerning legal persons, the partners of which are personally liable to tax for the portion of the profits that corresponds to their right, the audit procedure for returns must be followed by the tax administration and the legal person itself. The partners of the aforementioned legal persons are entitled to assert against the tax administration all the irregularities committed by the administration in the taxation procedure.

The irregularities identified in the accounts inspection of a legal person who is liable to corporate income tax do not entail relief from the additional taxes on income to which the beneficiaries of the constructive dividends are validly liable.

## Part 2 - Recourses for the taxpayer

### Chapter 1 - Tax litigation

#### Section 1 - Preliminary claim submitted to the tax administration

**Art.583.-** 1) A taxpayer who contests the merit of a tax and who requests relief therefrom or the reduction thereof can submit a claim to the Finance Minister.

2) The time-limit for submitting a claim is three (3) months as from the date:

- of service of the notice to pay;
- of the payment of the contested tax, where said tax did not result in a notice to pay being drawn up;
- of the payment of withholding tax, for claims that concern said tax.

3) All claims must, under penalty of inadmissibility:

- a) state the contested tax(es) or duty(ies);
- b) be accompanied by the collection order or by a receipt for payment in the event of a tax that does not lead to a collection order being drawn up;
- c) contain a summary presentation of the claimant's arguments and conclusions, backed up by adequate supporting documents;
- d) be dated and signed by its author.

4) The tax administration may, before responding to the claim, ask the taxpayer to provide additional documents.

The response to any requests for additional documents must reach the tax administration within eight (8) days of the notification thereof. If not, the department that is responsible for handling the dispute will examine the case as it stands.

5) The Finance Minister, who may delegate their power to the Director General of Taxes, will rule on the claim, within a time-limit of two (2) months following receipt thereof, by deciding to refuse or accept it, in whole or in part.



The request for additional documents referred to in paragraph 4 of this Article will suspend this time-limit for a duration of eight (8) days.

The lack of a response within the time-limit of two (2) months constitutes a refusal of the claim.

6) The above provisions also apply to requests for refunds. In this case, the claim must be submitted within a time-limit of three (3) months as from the date of payment.

**Art.584.-** 1) Claims do not suspend the payment of the taxes and associated penalties.

However, the taxpayer may, if they have made an express request in their claim, suspend the payment of the contested part of said taxes and the associated penalties, provided that they:

- a) state the amount or the bases of the relief they are requesting;
- b) paid the entirety of the non-contested taxes; and
- c) provide proof of having paid a deposit of 25% of the contested portion, by means of a payment to the Treasury.

2) If the deposit referred to in the preceding sub-paragraph is not paid, the collection of the contested portion of the tax can be pursued by all legal modes, with the exception of forced sale, which is only possible after the notification of the decision to refuse the claim by the Finance Minister.

### Section 2 - Judicial remedies

**Art.585.-** 1) Where the decision by the Finance Minister or their delegate does not give the taxpayer complete satisfaction, the taxpayer can bring the dispute before the court of competent jurisdiction within a time-limit of two (2) months.

This time-limit will start to run as from the notification date of said decision.

2) Absent a response from the Finance Minister or their delegate, the time-limit of two (2) months for referring the matter to the court of competent jurisdiction will start to run as from the expiration of the time-limit of two (2) months referred to in Article 583(5) of this Code.

**Art.586.-** The court of competent jurisdiction for all claims made against a decision by the tax administration concerning all duties, taxes, withholdings and charges provided for in this Code is the court of first instance for the claimant's place of residence, ruling on administrative matters.

### Section 3 - Offsetting of the tax base

**Art.587.-** 1) When a taxpayer requests relief from or the reduction of any form of tax, the tax administration may, at any time during the procedure and despite the expiration of the limitation periods, offset or request the offsetting, within the limit of the contested tax, of the relief that is acknowledged to be justified against the insufficiencies or omissions of

all types that are identified in the tax base or the calculation of the tax during the examination of the claim.

2) Offsetting may also be effected or requested between central taxes, where the claim concerns one of such taxes and provided that they were assessed in the respect of the same year. The taxes and duties collected on behalf of the State are excluded from this provision.

3) The offsetting of duties provided for in this article will be effected under the same conditions for the benefit of a taxpayer with regard to whom the tax administration carries out an adjustment, where said taxpayer cites excess tax to their detriment or where the adjustment identifies the existence of double taxation.

## Chapter 2 - Non-contentious claims

### Section 1 - Requests for rebates or reductions

**Art.588.-** 1) All taxpayers who, as a result of difficulty or hardship, cannot pay all or part of their tax bill, are permitted to request a tax rebate or reduction.

Rebates or reductions cannot be granted on account of a more or less temporary lack of prosperity of commercial, industrial, mining, forestry or farming enterprises.

2) The request must be sent to the Director General of Taxes.

3) Requests can be submitted at any point in time.

4) When the decision by the Director General of Taxes does not give complete satisfaction, the claimant has the possibility of referring the matter to the Finance Minister.

5) No recourses are open against the decision by the Finance Minister.

6) When a rebate or reduction is granted, no contentious proceedings can then be initiated or resumed by the taxpayer in order to challenge the remainder of the tax they are required to pay.

7) Requests for penalty rebates must be presented, reviewed and assessed in the same manner and under the same conditions as requests for tax rebates or reductions. However, they must reach the Director General of Taxes within a time-limit of two (2) months as from the date on which the taxpayer became aware of their debt.

**Art.589.-** 1) In the event of the total or partial destruction or voluntary demolition over the course of a year of their houses or factories, owners may request a rebate or reduction for the property tax on said buildings under the conditions stipulated by the preceding article.

2) The requests must be sent to the Director General of Taxes within one month of the destruction or of the completion of the demolition.

**Art.590.-** 1) No public authority may grant a total or partial rebate of registration duties, stamp duties, value added tax and taxes that are analogous to said levies, and of taxes

that are withheld or deducted on behalf of the Treasury, or suspend or order the suspension of collection without becoming liable in its own right.

2) All persons in public authority who, in any form whatsoever and for any reason whatsoever, without being authorised by the law, granted any exemption or relief from the public duties, taxes or charges provided for by this Code, are liable to the penalties provided for by Article 334 of the Criminal Code.

However, the President of the Republic is empowered to decide, through a meeting of the Council of Ministers, as a measure of reciprocity, on exemption from or reimbursement of taxes that are chargeable or levied pursuant to this Code on instruments entered into on behalf of foreign States by diplomatic or consular officers, where proof is provided that instruments of the same nature entered into in said foreign States by the government of the Republic of Benin benefit from the same exemption.

## Section 2 - Settlements for penalty tax and tax penalties

**Art.591.-** 1) The tax administration may, at the taxpayer's request, grant, by means of a settlement, a reduction of tax penalties or penalty tax, in consideration for the immediate payment of the amounts the taxpayer still owes, where said tax penalties and penalty tax, and, as applicable, the taxes in addition to which they are charged, are not definitive.

2) Penalties and tax penalties will be reduced by half if, within ten (10) days of receipt of the adjustment confirmation, the person liable pays the entirety of the taxes required of them and of the outstanding penalties and tax penalties. The reduction is one-quarter if payment is made within one (1) month.

However, and regardless of the chosen timeframe, the penalty due can be reduced to up to ten per cent (10%) of its amount if the taxpayer can demonstrate good faith.

In all cases, the request for the benefit of the settlement made on a printed form provided by the administration must be filed online or with the tax collection office within thirty (30) days of receipt of the adjustment confirmation.

3) The Director General of Taxes will rule on all settlements and all rebates of tax penalties and fines.

The Director General of Taxes may delegate their power to the technical and departmental tax directors.

The same rules apply to settlements concerning late payment penalties.

4) Once a settlement has been signed, contentious proceedings can no longer be initiated or continued by the taxpayer to challenge the penalties, tax penalties and taxes referred to in the settlement instrument.

5) In the event of total or partial non-compliance with the obligations that are incumbent upon the taxpayer, the settlement will lapse.

The tax administration will then proceed with the full and immediate collection of the penalties, tax penalties and taxes that are chargeable by law.

6) The tax administration cannot settle when it is planning on initiating criminal proceedings in response to the offences mentioned in this Code.

### Section 3 - Automatic relief

**Art.592.-** The Finance Minister, who may delegate their power to the Director General of Taxes, may, at any time, at their own initiative grant relief from taxes or fractions of taxes that were not yet due, in response to a proposal by the tax administration or at the taxpayer's initiative.

The Director General of Taxes may delegate this power to the directors of operations departments.

### Section 4 - Unrecoverable claims

**Art.593.-** 1) The treasury accountants who are responsible for collecting the taxes and duties provided for in this Code may, during the first two (2) months of the second year following that of the recognition of the taxes in their accounts, request the write-off of the taxes, recovery of which is not possible due to the disappearance, insolvency or indigence of the taxpayers.

2) The treasury accountants must provide evidence, in support of their request that, in a timely manner, they took all steps to safeguard and ensure the collection of the taxes in question.

3) Requests for write-offs must be accompanied by a brief explanation of the reasons for the claim being unrecoverable, as well as the evidence that makes it possible to assess or justify the practical impossibility, for the accountant, of recovering the claim for which a write-off has been requested.

4) The power to make decisions is conferred on the Finance Minister.

5) The write-off exempts the accountant from their personal and financial liability; however, it does not entail discharge for the person who is liable for payment, in particular if they are identified again at a later date or become solvent again.

## Part 3 - Recovery of tax

### Chapter 1 - Chargeability of tax

**Art.594.-** 1) Except as otherwise expressly provided, taxes, duties and charges are chargeable on the last day of the month following that in which the collection order was notified. The taxes for which collection is notified in December are chargeable in full on 31 December of the same year.

2) However:

- a) in the event of moving outside of the jurisdiction of the tax collection office, the voluntary or forced sale, the disposal or closure of an enterprise, the death of the taxpayer, bankruptcy or court-ordered liquidation, or the pursuit of a non-sedentary occupation the tax will become chargeable immediately;
- b) delay in the payment of prior taxes, the application of a penalty by the tax assessment or inspection authority, either following failure to file a return, or for late filing or underreporting taxable profits or turnover, will cause all the taxes assessed to the taxpayer or the person who is liable to become chargeable immediately, as soon as the collection order has been notified.

## Chapter 2 - Payment of the tax

### Section 1 - Enforcement orders

**Art.595.-** The recovery of the taxes and duties referred to in this Code can only be undertaken on the basis of an enforcement order.

**Art.596.-** 1) The following collection orders constitute enforcement orders, provided that they bear a writ of enforcement:

- a) the notice to pay;
- b) the on-the-spot assessment notice for blatant tax fraud, drawn up pursuant to Articles 568 et seq. of this Code.

2) The writ of enforcement is appended to the notice to pay by the Director General of Taxes or the person delegated by the Director General of Taxes for this purpose.

**Art.597.-** In the event that a taxpayer has not paid the instalments that have fallen due or the taxes and duties that result from any one of the returns provided for in this Code, which was filed under the conditions and within the time-limits defined for each type of tax, the tax collection officer will issue a notice to pay bearing a writ of enforcement in light of the returns filed on time and on the basis of a general statements of amounts paid over where said taxes have been withheld in discharge by third parties.

**Art.598.-** 1) The notice to pay is nominative and must contain, under penalty of invalidity:

- a) the surnames, first names, corporate name and tax residence of the taxpayer;
- b) the number and date of the notice;
- c) the date of service of the notice to pay;
- d) the name of the authority that issued the notice to pay;
- e) the nature of the taxes, duties or charges concerned;
- f) the amounts to be paid by type of tax, duty or charge;
- g) the period concerned by the taxes in question,
- h) the amount of the penalties applied;
- i) the total amount of the taxes, duties, charges and penalties to be paid;
- j) the due date.

2) The notice to pay must be served by the tax collector on the defaulting taxpayer at the latest the day after it is recognised.

3) The recognition of the notice to pay will take place on the date of its receipt or its signature by the tax collector.

4) The notification date of the notice to pay constitutes the starting point of the time-limit for recovery, the statute of limitation, the time-limit for filing a claim and for the expiration of the Treasury lien, without prejudice to the specific provisions stipulated in this Code for certain taxes.

5) The notification marks the start of the period of four (4) years covered by the Treasury lien.

**Art.599.-** 1) There is no reason to issue a notice to pay for taxpayers whose tax situation is that of a credit balance.

2) A notice to pay must be issued for all additional tax assessed following a tax audit.

3) A summary statement must be issued for the amounts paid over by persons who are liable under law for the payment of indirect taxes.

4) A statement of provisional instalments must be issued quarterly to record the payments received. These instalments must be recorded in an account of provisional payments that is cleared according to the tax owed in respect of the fiscal year concerned.

These statements, following approval by the Director General of Taxes or authorised persons, serve as proof of payments to the Treasury, without issuance of notices to pay.

## Section 2 - Terms of payment

### Sub-section 1 - Means of payment

**Art.600.-** 1) Taxes, duties, charges and penalties can be paid using one of the following means:

- a) payment in cash at the office of the relevant tax collection officer;
- b) remittance of a certified bank or postal cheque made out to the relevant tax collection officer or the Treasury;
- c) a bank or postal wire transfer to an account opened in the name of the General Tax Directorate;
- d) remittance of a tax refund certificate or another means of payment for taxes and duties that is authorised by the tax administration.

2) Taxpayers are also authorised to pay the taxes, duties, fees and levies, penalty taxes, penalties and interest they owe by means of electronic procedures, under the conditions defined by a regulation.

[NB - See Order n°2015-1302/MEFPD/CAB/SGM/DGI/DGTCP of 30 March 2015 granting authorisation for payment of taxes, duties and charges and analogous by bank transfer]

**Art.601.-** 1) All payment of tax, including revenue stamps, must obligatorily give rise to the issuance of a tax payment receipt.

2) The tax payment receipt can be issued electronically.

3) Receipts are exempted from stamp duty.

4) A duplicate tax payment receipt will be issued free of charge, subject to request, by the officer responsible for collection, to the taxpayer as proof of payment of the taxpayer's taxes.

### **Sub-section 2 - Payment without prior issuance of a collection order**

**Art.602.-** Payments that are made without prior issuance of a collection order, in respect of all taxes, duties and charges, with the exception of stamp, registration and analogous duties, will be received upon presentation of a payment slip that is drawn up in triplicate.

As applicable, collection orders will be issued after assessment of the tax.

**Art.603.-** 1) The amount of the payments will be allocated subsequently in the place and stead of the taxes assessed, over the course of the year during which payments would have been made in respect of the income generated by the taxpayer during the previous year.

2) If these taxes represent an amount that is less than the amount of the expected payments, said payments will be allocated immediately, commensurately, in the place and stead of said taxes. The fractions of payments in advance that remain available, after this allocation has been effected, will be automatically reimbursed to the taxpayer.

3) If the taxpayer was not included in the collection orders for income tax or tax on profits for which collection notices were issued during the year in which the payments were made, the amount of said payments will be reimbursed to the taxpayer automatically.

### **Section 3 - Limitation period for recovery action**

**Art.604.-** 1) The limitation period for action to recover taxes, duties, fees and withholdings of all types is four (4) years.

2) This limitation period, to which the administration is subject, can be interrupted by:

- a) the payment of all or part of the debt, as well as the filing of claims by the taxpayer;
- b) the registration of a Treasury lien;
- c) orders to pay, final notices to pay and all procedural documents;
- d) all instruments that contain acknowledgement of the tax debt by the taxpayer.

3) The limitation period for recovery action does not apply in the case of taxes that are withheld and those that are not collected by the party that is liable for payment.

## **Chapter 3 - Legal proceedings**

### **Section 1 - Provisions that are common to legal proceedings**

#### **Sub-section 1 - Instigation of legal proceedings**

**Art.605.-** 1) The following rules are applicable to the enforced recovery of taxes, duties, levies and withholdings of all types that are stipulated by this Code, excluding all other legislation.

2) All steps in legal proceedings that are taken without complying with the formalities stipulated herein may give rise to proceedings against the persons who took them, who shall pay the cost thereof.

3) All the formalities concerning legal proceedings are stipulated under penalty of invalidity.

However, the proceedings will only be annulled if the omission or irregularity identified was detrimental to the complainant party.

**Art.606.-** 1) All taxpayers, their representatives or successors-in-interest who have not paid, on the regulatory date and when due, the taxes, duties and levies of all types that are collected for the benefit of the State budget or that of the municipalities, are liable to face legal proceedings for enforced recovery.

2) The legal proceedings may concern any of the assets in the possession of the taxpayer, their representatives or their successors-in-interest.

**Art.607.-** 1) Unless a stay of proceedings is granted under the conditions provided for by this Code, the tax collection officer must initiate legal proceedings and apply coercive measures against taxpayers who have not paid on time, in order to obtain payment of the outstanding amounts.

2) No public or administrative authority can order the suspension or deferral of the recovery of taxes, duties and other claims or hinder the normal progress thereof without triggering their personal financial liability.

3) Officers who are responsible for recovery and who have allowed the limitation period to expire without initiating recovery actions or who, after starting them, abandoned them until the claims entrusted to them for recovery were time-barred, shall forfeit their rights against the persons who are responsible for payment, but shall remain liable with regard to the public bodies concerned.

**Art.608.-** No form of legal proceedings can be enforced on premises that are used as housing, on Sundays and public holidays, or started before six (6) am and after nine (9) pm.

**Art.609.-** The costs of proceedings will be paid by the defaulting taxpayer as from the date of the notification of the coercive measure implemented by the tax collection officer. The costs of proceedings and the late payment penalties may be reduced proportionately to the amount of relief obtained, without it being necessary to notify a new procedural instrument to the taxpayer concerned.

**Art.610.-** All procedural instruments will be deemed to have been notified not only for the recovery of the chargeable portion of the assessments included therein, but also for all the portions of the assessments that fall due thereafter, before the taxpayer has discharged their debt.

**Art.611.-** 1) An original must be drawn up of all procedural instruments, and as many copies made as there are recipients.



2) Notices must be served on the taxpayer in person, who must acknowledge receipt thereof by signing the original.

In the event that service in person is impossible, the instrument must be delivered in a sealed envelope to the taxpayer's home, to the family members, domestic staff, employees or any other person who lives at the same address.

3) The person who takes delivery of the instrument must acknowledge receipt thereof by signing the original.

If the taxpayer or the person present refuses to take delivery of the instrument, this must be mentioned on the original and the officer effecting service must nevertheless leave the instrument in a sealed envelope, after noting on the original and the copy that service thereof in person was refused.

4) If service of the instrument could not be effected because the person liable for payment was not present, and neither was anyone present on their behalf at their home or place of residence, the instrument will be deemed to have been validly served on the tenth day following the date of its delivery to the last known address stated on the collection order that was sent to the person liable for payment. A copy of the instrument must be left with the secretary's office of the town hall for the location of the last known residence.

5) Postal mail may be used for service of procedural instruments where the person liable for payment is domiciled outside of the territorial limits of the collection office's jurisdiction. The procedural instrument must be placed in a sealed envelope bearing, on the front, the order number of the instrument to be notified and the address of the party liable for payment and, on the reverse, the stamp of the officer who has initiated proceedings. The postmark will serve as evidence of the date.

### **Sub-section 2 - Officers empowered to initiate proceedings**

**Art.612.-** Legal proceedings are initiated at the request of the tax collection officers who order coercive measures to be taken against taxpayers who have not paid on time.

**Art.613.-** 1) Legal proceedings are implemented by litigation officers who are specifically appointed for this purpose, under the supervision and responsibility of tax collection officers.

2) As soon as they are appointed, litigation officers must be sworn in before the administrative court at the place where they will perform their duties.

In the event of a transfer, the swearing in formality does not have to be repeated.

3) The Director General of Taxes is authorised to use the services of bailiffs, where necessary.

**Art.614.-** 1) In the event of insults, threats or assault against a litigation officer, said officer will draw up an official report thereof, which will be delivered to the collection officer, who will report the matter to the relevant Public Prosecutor.

2) For all instruments of service, notification, observation or enforcement, litigation officers may be assisted by any and all law enforcement officers.

3) Without prejudice to the penalties provided for by the laws and regulations in force, and under penalty of removal from office, it is prohibited for collection and litigation officers to undertake enforcement measures without having been authorised to do so in the manner provided for by this Code.

Under penalty of removal from office, they are also prohibited from purchasing items that were seized or sold at their initiative.

### Sub-section 3 - Precautionary measures

**Art.615.-** Before the issuance of an enforcement order, if it appears that a taxpayer has compromised the recovery of taxes and duties or if it is clearly established that a taxpayer has not complied with tax legislation, the General Tax Directorate will take all customary precautionary steps to compute immediately and recover the amounts that are likely to be owed in accordance with the legislation in force.

## Section 2 - Measures under ordinary-law proceedings

**Art.616.-** The measures under ordinary-law proceedings are taken in the following order:

- 1° final notice to pay;
- 2° administrative attachment;
- 3° sale.

**Art.617.-** Pursuant to the Treasury's right to take direct, individual action, a garnishee notice may be issued directly against any taxpayer who has not paid on time, with no prior final notice to pay, as soon as the time-limit for payment defined by the notice to pay has expired.

### Sub-section 1 - Final notice to pay

**Art.618.-** 1) The final notice to pay is an administrative instrument that follows a notice to pay and is issued by a litigation officer.

2) It must contain, under penalty of invalidity, the following information:

- a) the references of the enforcement order pursuant to which the proceedings have been initiated;
- b) a clear breakdown of the amounts claimed, differentiating between the principal and ancillary amounts;
- c) the cost of the final notice to pay;
- d) the order to pay the tax debt within a time-limit of five (5) days, under penalty of being compelled to do so by all legal means.
- e) If the taxpayer possesses real property that can be attached, the number of the land title, the land records references or any other means of identification, and the description of the properties;
- f) the signature of the litigation officer.

3) An original and a copy of the final notice to pay must be drawn up.

### **Sub-section 2 - Administrative attachment**

**Art.619.-** Administrative attachment is a type of proceeding implemented by a collection officer or an enforcement officer concerning the tangible movable property, income, crops and real property that belong to a defaulting taxpayer, with a view to the sale thereof.

#### **Paragraph 1 - Attachment of tangible movable property**

**Art.620.-** 1) Five (5) days after service of an order that was returned undelivered, the tax collection office may proceed with the administrative attachment of the taxpayer's property, whether said property is held by the taxpayer or by a third party.

2) Before inventorying the property in an official report, the officer responsible for legal proceedings must read the final notice to the taxpayer or to the third party against whom action is taken.

The attachment will be carried out notwithstanding any objections. However, all interested parties may file an ownership claim with regard to the attached items.

3) If, during an attachment, the taxpayer asks to settle their debt, the attachment will only be interrupted by the production of evidence of the payment of the entirety of the amounts owed, including the cost of the attachment undertaken.

The payment of an instalment will not suspend the effects of the attachment, which must be applied in order to safeguard all of the Treasury's rights.

**Art.621.-** For the recovery of the claims referred to in this Code, the following are immune from attachment:

- 1° the bedding, clothes and kitchen utensils needed by the debtor subject to attachment and their family;
- 2° the books and instruments that are necessary for the personal pursuit of the profession of the debtor subject to attachment;
- 3° sufficient food for one (1) month for the debtor subject to attachment and their family;
- 4° the animals intended for the subsistence of the debtor subject to attachment and the food needed to rear them;
- 5° the seeds necessary for sowing a surface area of five hectares;
- 6° the items that are essential for disabled persons or intended for the care of sick people.

**Art.622.-** 1) If there is no attachable movable property and when it becomes clear that there is no other means to obtain the payment of the amounts owed by the taxpayer, an official report of non-attachment will be drawn up by the litigation officer, who to this end will be assisted by a law enforcement officer.

The law enforcement officer will countersign the official report that notes the lack of attachment.

2) In the event of manifest insolvency, the litigation officer must obtain a certificate from the Mayor that confirms the taxpayer's indigence. An official report of non-attachment will be drawn up in two original counterparts, one of which will be attached to the unrecoverable assessments and the other used in support of the statement of expenses from the litigation officer.

**Art.623.-** 1) Any litigation officer who, upon attempting an attachment finds that a previous attachment has been applied to the taxpayer's possessions that are eligible for attachment, can only take note of the attached items, after obtaining the official report of said previous attachment.

2) The official report that records the attached items must be notified to the initial attaching party, to the taxpayer subject to attachment, and, where applicable, to the garnishee and the custodian.

This constitutes a notice of attachment of the proceeds of the sale and triggers the right to recover said proceeds.

3) If all the items that are eligible for attachment were not included in the first attachment, the litigation officer will carry out a more extensive attachment.

4) If the first attaching party does not take action, the collection officer responsible for recovery may order the resumption of the procedure initiated by said first attaching party.

**Art.624.-** 1) If, at the time of the attachment, the taxpayer does not pay, the litigation officer will make an inventory of the items to be attached that are found on the premises and the furniture the officer is able to open, and will make an official report of this.

2) The official report of the administrative attachment must include:

- a) the description of the attached items;
- b) the date of the sale;
- c) the appointment of the custodian.

3) Where the litigation officer cannot appoint a custodian who offers all the guarantees, the officer can take custody of the attached items in order to store them on the administrative premises specifically designated in the official report of the administrative attachment, with the agreement of the collection officer. In this case, the litigation officer can be designated as the custodian.

4) Attached motor vehicles can be seized and driven by administrative drivers to the Tax Collection Office, or to appropriate administrative premises. In the latter case, the premises manager, who is appointed as the custodian, will only release the vehicle upon receipt of discharge from the tax collection officer.

**Art.625.-** 1) Attached items cannot be alienated.

2) It is prohibited for the custodian appointed, under penalty of payment of damages, to use the movable property or other items that are attached or to derive profit therefrom, unless authorised to do so by the President of the administrative court of competent jurisdiction.

3) In the event of the disappearance or use of the attached items, the litigation officer must draw up an official report on this with a view to referring the matter to the relevant Public Prosecutor, at the initiative of the collection officer.

4) The use, destruction or misappropriation of items attached for the recovery of taxes and duties constitutes a criminal misdemeanour, even if the attachment is subsequently found to be invalid on account of a procedural defect.

The misdemeanour of use, destruction or misappropriation of items attached for the recovery of taxes or duties is punished by the penalties stipulated in Article 646 sub-paragraph 6 of the Criminal Code.

**Art.626.-** 1) If a litigation officer cannot carry out an attachment because doors were not unlocked or access to a closed area was refused, the officer must post a custodian at the doors and inform the administrative authority without delay, so that said authority can authorise the opening of the premises.

2) The costs of opening the doors will be paid by the taxpayer.

3) The doors must be opened and the attachment performed in the presence of law enforcement officers, and must be recorded in a single official report, which is drawn up and signed by the litigation officer and countersigned by the law enforcement officers who were present.

### ***Paragraph 2 - Attachment of real property***

**Art.627.-** 1) Fifteen (15) days at the latest, after service of the final notice to pay and in response to the failure to pay by the taxpayer, the tax collection officer will ensure that the final notice is registered with the land records office.

Said registration will constitute an administrative attachment.

2) Where there is no land title for the property that may be attached, the tax collection officer may, as soon as the final notice is served, order the property to be registered with the Agence Nationale du Domaine et du Foncier. This registration must be effected as a matter of urgency, at the taxpayer's expense.

3) The tax collection officer must serve notice thereof to the taxpayer and, as applicable, to the occupants of the building.

4) The property and its revenues will be deemed to have been seized for the benefit of the Treasury.

### **Sub-section 3 - Sale**

#### ***Paragraph 1 - Sale of tangible movable property***

**Art.628.-** 1) Sales are only possible with the authorisation of the Director General of Taxes.

2) The sale will take place at least ten (10) days after the attachment, except with the specific authorisation of the Finance Minister for urgent cases.

Concerning perishable foods, as well as goods that cannot be stored without running the risk of damage or obsolescence, the sale must be made within three (3) days of the attachment.

3) The sale must be preceded by public notice at least three (3) days beforehand, via appropriate means.

4) The sale must take the form of a public auction by a litigation officer or by an auctioneer, in the presence of the tax collection officer or their representative, in the manner prescribed by ordinary law.

Then choice of the location of the sale is left to the discretion of the tax collection officer.

The proceeds of the sale must be immediately paid to the tax collection officer, who will issue a tax payment receipt to the debtor subject to attachment.

5) The sale will be interrupted as soon as the proceeds are sufficient to clear the taxes, duties, fees and penalties that are payable on the date of said sale, as well as the costs of the proceedings. In this case, the remainder of the attached items will be returned to the taxpayer.

### **Paragraph 2 - Sale of real property**

**Art.629.-** 1) Sales of real property are only possible with the authorisation of the Finance Minister.

**Art.630.-** 1) At least fifteen (15) days before the sale, the public notice formalities must be carried out by displaying posters at the headquarters of the Agence nationale du domaine et du foncier, at the office of the tax collection officer who initiated the proceedings, at the town hall of the location of the property and in the press.

2) Under penalty of invalidity, the posters must contain the following information:

- a) the number of the land title;
- b) the land records references;
- c) the description of the building;
- d) the date, time and place of the sale;
- e) the amount of the reserve price set in accordance with the benchmark prices for real property sales defined by the tax administration.

**Art.631.-** 1) The sale must take the form of a public auction by a litigation officer or by a *notaire*, in the presence of the tax collection officer or their representative.

2) Then choice of the location of the sale is left to the discretion of the tax collection officer.

3) No bids will be accepted if they are less than the reserve price.

4) The bidder who is declared to be successful must pay the price to the tax collection officer forthwith or at the latest within eight (8) days of the sale.

5) If there are no valid bids, the litigation officer or the *notaire* can resume the sale within a maximum time-limit of two (2) months.

6) The Treasury will be declared to be the successful bidder for the amount of the reserve price if the sale turns out to be unsuccessful. Property for which the Treasury is the successful bidder will be managed by the tax collection officer. The debtor subject to attachment will be released to the extent of the reserve price if the amount thereof is less than that of their debt. If the reserve price exceeds the amount of the tax debt, the balance will be payable to the debtor after deduction of the cost of the procedural actions.

7) If the sale of the building generates an amount that is higher than the taxpayer's debt, the excess will be return to the debtor after deduction of the cost of the proceedings.

8) Where the proceeds of the sale must be divided among several creditors, the debtor will be released to the extent of the portion of said amount that is allocated to the Treasury.

### Section 3 - Specific measures concerning proceedings

#### Sub-section 1 - Garnishee notices

**Art.632.-** 1) The following are required, when requested, to pay in the place and stead of the persons liable for payment and for the amount of the funds they owe or that are in their possession, to the extent of all or part of the taxes, duties, charges and penalties owed by said persons:

- a) all managers, officers, directors and liquidators of companies;
- b) all custodians, whether public or otherwise, who, in any capacity whatsoever, hold funds that are allocated to taxpayers who owe taxes that constitute preferred debts;
- c) all banking institutions and postal checking centres;
- d) all business agents who hold the price of a sale that was effected on behalf of a taxpayer;
- e) all bailiffs who are tasked with recovering rent on behalf of an owner of real property who owes tax;
- f) all employers who owe salaries to their employees who are liable for the payment of taxes;
- g) all acquirers of going concerns that belonged to taxpayers and that are not yet paid what they owe to them;
- h) all heirs of a taxpayer;
- i) all treasury accountants;
- j) the Caisse des Dépôts et Consignations; and
- k) in general, all farmers, tenants, collectors, bursars and other custodians and debtors of funds originating from persons liable for payment and that are allocated to the Treasury lien.

This obligation is also incumbent upon managers, corporate officers, directors and liquidators of companies, for the taxes said companies owe.

2) The request by the tax collection officers must take the form of a garnishee notice.

**Art.633.-** 1) When a garnishee notice is served on a bank, a decentralised financial system, a financial institution or any other person whose profession involves custody of funds, they are under an obligation to inform, forthwith, in writing and at no charge, the officer responsible for the proceedings of the nature of the account(s) of the debtor against

whom proceedings are initiated, as well as, on the basis of the statement of account, the balance thereof on the date of service.

2) The garnishee notice will garnish all the monies that the third party holds or owes at the time of receipt thereof, as well as all monies that it will hold or owe during the six (6) months following the date of receipt thereof and within the limit of the amounts to be recovered.

It also covers recurring debts.

3) The monies that are owed or held by the third party at the time of the attachment or during the subsequent six (6) months, as well as the claims with successive due dates must, immediately or as and when they become available to the third party or mature, be paid to the tax officer applying the attachment, notwithstanding any objections.

The payment thus made will release the garnishee with regard to the person who is liable for payment.

4) When a person simultaneously receives several notices, made out to the name of the same person who is liable for payment, issued by more than one duly empowered treasury accountant or officer, said person must, in the event of insufficient funds, execute said notices in proportion to their respective amounts.

**Art.634.-** Treasury accountants are authorised to use garnishee notices for the recovery of all public claims and against all persons against whom proceedings have been initiated, even if they are not mentioned by name on the enforcement order.

### Sub-section 2 - Closure of establishments and publications in the press

**Art.635.-** 1) As from the first phase of proceedings, the following additional measures can be applied:

- a) with the authorisation of the Director General of Taxes and notwithstanding the provisions of Article 620 of this Code, collection officer may, five (5) days after the final notice, provisionally close industrial, commercial or non-commercial establishments for a duration of three (3) days to three (3) months that can be renewed, if the taxpayer has not paid their tax debt within the stipulated time-limits;
- b) on a proposal from the Director General of Taxes, the Finance Minister may publish, in the written, spoken or televised press, the list of the taxpayers who were the subject of a final notice to pay and who have not paid their tax debts within the stipulated time-limits.

2) The provisional closure procedure will not be implemented against a taxpayer who holds a claim against the State or its branches of an amount that is higher than their tax debt and who produces a supporting document from the expenditure department.

3) The provisional closure of an establishment will end immediately with the payment in full of the amounts owed.

**Art.636.-** In the event that proceedings which are initiated against taxpayers who carry on their activity in a fixed place of business are found to be ineffective due to a lack, insufficiency or misappropriation of property that is eligible for attachment, the penalty of the definitive administrative closure of their establishment may be imposed on said



taxpayers, on a proposal by the officers responsible for the proceedings, by a joint order of the Finance Minister and the Minister of the Interior.

### Sub-section 3 - Freezing of accounts

**Art.637.-** 1) Where the final notice to pay and the attachment are found to be ineffective in ensuring the recovery of the taxes, duties and charges that are due, the tax collection officer may proceed with the immediate freezing of all current, deposit or advance accounts of the interested party, after receiving the assent of the Director General of Taxes.

2) Freezing accounts is a specific measure that cannot be equated to an attachment or a garnishee notice.

3) Freezing bank accounts will end immediately after the payment in full of the amounts owed.

### Section 4 - Challenges to proceedings

**Art.638.-** All the formalities concerning legal proceedings are stipulated under penalty of invalidity.

However, the invalidity shall only be declared if the omission or irregularity identified has caused harm to the party that cites it.

**Art.639.-** 1) The court of first instance, ruling on urgent administrative matters or the specialised judge have jurisdiction over objections to the form of the measures that result from initiating proceedings.

2) All objections concerning the existence or the portion of the debt fall under the jurisdiction of the court of first instance ruling on administrative matters.

**Art.640.-** The attachment will be carried out notwithstanding any objections.

**Art.641.-** 1) Where it is claimed that the furniture and furnishings attached belong to third parties or are immune from attachment, at the latest fifteen (15) days after the attachment, the claimant must send the Director General of Taxes or their representative a submission, accompanied by all relevant evidence.

2) The Director General of Taxes or their representative will rule on the submission within a maximum time-limit of thirty (30) days as from the date of receipt of the aforementioned submission, and in all cases before proceeding with the sale.

3) Absent a response within the aforementioned time-limit or a refusal decision, the claimant may summon the Director General of Taxes to appear in urgent proceedings before the administrative court.

4) The action must be filed, under penalty of inadmissibility, within fifteen (15) days of the notification of the administration's decision or the expiration of the time-limit for responding granted thereto. The judge may order the stay of the sale of the claimed property

until a definitive decision is rendered on the claim to establish ownership or the claim for items to be excluded from the attachment.

5) The judge will rule in urgent proceedings and exclusively on the basis of the justifications submitted to the Director General of Taxes or their representative. The claimants are not authorised to submit any evidence to the Director General of Taxes or their representative other than that they have already adduced in support of their submissions, or to cite in their pleadings points of fact other than those mentioned in their submissions.

**Art.642.-** (L.F.2024) 1) When the taxpayer contests the regularity of the form of the proceedings, he shall refer the matter to the Director General of Taxes within ten days of notification of the proceedings.

2) The administration decides on the challenge within thirty days of receipt.

3) In the absence of a response or in the event of an unsatisfactory response, the taxpayer can bring the dispute before the competent court in the place where the seized assets are located within ten days.

The judge must rule at the latest within one month of the matter being referred to them.

**Art.643.-** (L.F.2024) 1) Any dispute relating to the existence of the obligation, its amount or its due date constitutes an objection to the enforcement. The objection must first be brought before the Director General of Taxes within a period of fifteen days from the date of notification of the first document issuing the constraint.

2) The Director General of Taxes or his representative gives a ruling within thirty days of receipt of the objection.

3) In the absence of a response or in the event of an unsatisfactory response, the taxpayer can bring within ten days the dispute before the competent court at the seat of the revenue office that initiated the proceedings.

4) However, when a third party, implicated by virtue of common law provisions, contests its obligation to the taxpayer's debt pursuant to a writ of execution, the administrative court shall stay the proceedings until the civil court has ruled on the question of obligation.

The civil court is seised, under penalty of nullity, within seven days of the decision to stay proceedings.

5) Joint and several third parties and third-party holders are prosecuted in the same way as the taxpayers themselves and are subject to the same procedure in the event of opposition to prosecution or enforcement.

**Art.644.-** No one may stay proceedings for the recovery of taxes and analogous duties, penalty taxes and penalties, unless payment is made, to the Treasury, by the objecting party, of a deposit that constitutes payment of 25% of the total amount of the contested sum.

### Section 5 - Costs of proceedings

**Art.645.-** The costs of proceedings are calculated on the amount of the arrears, in accordance with the following scale, with a minimum tax levy of XOF 1,000.

Nature of the actions	Rate
1) Garnishee notices	5%
2) Final notice to pay	5%
3) Official report of an attachment or forced sale	5%
4) Official report of an interrupted attachment	1%
5) Official report of non-attachment	1%
6) Witnesses (per session)	1%
7) Official report on the posting of notices	1%
8) Original notices	1%
9) Sale	1%
10) Official report on inventory	1%
11) Official report on a sale or interruption of a sale	1%
12) Proceeds owed to the auctioneer	8%
13) Cost of transport of attached property	2% of the amount owed at the time of the attachment

**Art.646.-** Each of the procedural instruments issued by the treasury bailiffs must, under penalty of invalidity, state the price at which it was taxed.

These instruments are exempted from the stamp duty and registration formality, both as regards the originals and for copies of ancillary instruments.

## Chapter 4 - Guarantees of recovery

**Art.647.-** The provisions of this chapter are applicable both to direct taxes and all indirect taxes and duties, regardless of whether or not they are levied by means of enforcement orders.

### Section 1 - Treasury lien

**Art.648.-** 1) The Treasury lien for tax matters is a right to preferential payment out of the debtor's entire movable and real property.

2) It ranks below the wage lien referred to by labour legislation and above the legal costs lien.

The lien created for the benefit of local or municipal taxes is ranked immediately below that of the Treasury.

3) The Treasury lien applies for a period of four (4) years in all cases calculated as from the start of recovery of the collection orders, regardless of the original taxation year.

4) The lien is applied in the same way for the recovery of the payments that must be made by taxpayers without the issuance of collection orders or by instalments prior to the issuance of collection orders, as soon as said payments fall due and as soon as the amount to be recovered is notified, to the collection office, by the relevant assessment department.

5) The lien defined in the preceding paragraphs can also be applied:

- a) to the crops, income, rent and revenues from movable and real property;
- b) to the proceeds, rent and revenues of all kinds from mining, industrial, farming and commercial enterprises;
- c) to the pay, wages, salaries and incidental payments, within the limit of one-third of the net salary.

6) The lien attached to the tax is without prejudice to the other rights that, in the same way as any creditor, the Treasury can exercise with regard to taxpayers' property.

**Art.649.-** In all cases where the tax collection officer considers that the Treasury lien is jeopardised by the taxpayer on account of frequent and unforeseen changes of residence, the risk of asset dissipation when an adjustment procedure is pending, or by the identification of other risks, said officer is authorised to implement the following provisional measures:

- a) registration of an interim charging order on real property;
- b) provisional attachment of movable property, of the items placed in a safe, of receivables, of partners' rights and of securities.

2) All provisional attachments or interim charging orders will become definitive when the tax is collected or falls due.

3) These measures must be notified in writing.

## Section 2 - Treasury's statutory mortgage

**Art.650.-** 1) For the recovery of the taxes, duties, fees and withholdings of all types, interest on arrears, tax penalties and penalty taxes provided for by this Code, the Treasury has a statutory mortgage on all the taxpayers' real property.

2) This mortgage will be assigned a rank on the date of its registration with the land records office.

3) It can only be registered as from the date on which the taxpayer has incurred a penalty for payment default, or the date of service of the notice to pay where the taxes result from an adjustment procedure.

## Section 3 - Joint and several liability for payment

**Art.651.-** The collection order drawn up is enforceable, not only with regard to the taxpayer who is named on said order, but also with regard to said taxpayer's representatives or beneficiaries.

**Art.652.-** Regardless of the matrimonial regime chosen by the spouses, each of them is jointly and severally liable for the payment of taxes assessed to their spouse, unless they are legally separated.

**Art.653.-** (L.F.2024) 1) The owner of a business is jointly and severally liable with the operator for the payment of taxes levied in respect of the operation of the business.

2) Natural or legal persons using temporary staff are jointly and severally liable with the labour placement company for the payment of payroll tax.

**Art.654.-** All assignors of a going concern, a building, an office, a position, an enterprise or the right to practise a non-commercial profession is liable, with the assignee or their successors-in-interest, for the payment of the associated taxes that are payable until the date of the assignment, notwithstanding any agreements to the contrary.

The *notaires* who are tasked with drawing up the deed of assignment are under an obligation, under penalty of joint and several liability for the payment of the taxes and duties on the real property being conveyed, to ensure that they are provided with a certificate from the tax offices confirming payment of the tax assessments pertaining to the year of the transfer or assignment and prior years.

**Art.655.-** Payments of tax on business profits pursuant to an enforcement order in the name of the partners of partnerships that are not subject to corporate income tax in respect of their share of the partnership's profits are still, notwithstanding, corporate debts.

**Art.656.-** In the absence of voluntary payment, proceedings will be initiated against the following, who will be compelled to make payment in their own right, by all legal modes provided for herein and using the same procedure as that used against the taxpayers who are named on the collection orders:

- 1° third parties who are jointly and severally liable for the payment of the tax pursuant to the provisions of ordinary law or of tax legislation;
- 2° the public custodians and liquidators of wound-up companies referred to in Article 657 below, who have relinquished funds allocated to the Treasury lien without having paid the taxes owed by the persons from whom said funds originated;
- 3° the shareholders, managers, officers, directors and liquidators of companies who have not paid on the due date or stipulated instalment dates, the taxes to be paid by the company that they ran or liquidated or from which they received, remuneration, dividends, advances or profits;
- 4° garnishees who, having been instructed to pay in the place and stead of the persons liable for payment, failed to do so within five (5) days of service of the garnishee notice referred to in Article 632 of this Code. As this payment must be made notwithstanding any objections, they will become jointly and severally liable for the amounts with the persons responsible who avoided payment.

#### Section 4 - Obligations of public depositaries of funds

**Art.657.-** 1) The bailiffs, registrars, auctioneers, *notaires*, insolvency unions, escrow agents and all of the public depositaries of funds, can only hand over to the heirs, creditors and other persons who have the right to receive the amounts in escrow and custody upon proof of payment of the income taxes owed by said persons from whom said amounts originated.

2) Said escrow agents and depositaries are authorised, as necessary, to pay directly any taxes that are owed before handing over the funds.

3) These provisions also apply to the liquidators of wound-up companies.

4) The obligations imposed on third parties who are required to make payment pursuant to the provisions of this Article include, before the start of recovery proceedings by means of enforcement orders, the settlement of all the amounts that must be paid voluntarily by the taxpayers in respect of withholding tax and the payments to be made ahead of time or in the form of provisional instalments or pursuant to specific provisions of tax law.

**Book 6 - Final provisions**

**Art.658.-** This law, which lays down the General Tax Code of the Republic of Benin, repeals all previous provisions to the contrary, in particular:

- those of Law n°64-35 of 31 December 1964 that consolidated fiscal duties, taxes and levies for registration, stamp payment, property and mortgage registration, and on income from investments;
- those of Order n°2-PR/MFAE of 10 January 1966 that consolidated that law on direct and indirect taxes;
- those of Decree n°2005-124 of 17 March 2005 that approved the general consolidation of tax procedures in the Republic of Benin.

**Art.659.-** This law,

which will enter into force starting on 1 January 2022, will be published in the Official Journal and implemented as a law of the State.





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