

Senegal - [English] Finance Law Amendment (Art. 633)

Article 53. —

Points e) and f) shall be added to Article 667 III of the above-mentioned Code as follows:

“Article 667.III. —

e) Any failure to comply with one of the obligations set out in Article 633. I concerning the obligations to identify, keep, transmit and declare information on beneficial owners is punishable by a fine of CFAF 10,000,000. The fine shall be payable in proportion to the number of documents or the number of times required information is withheld, omitted, incomplete or inaccurate. ”

“Article 667.III. —

f) Any failure to comply with one of the obligations set out in Article 633. VI concerning the obligations to identify, keep, transmit and declare information on the persons mentioned in the legal arrangements, the beneficial owners and the assets placed in the legal arrangement is punishable by a fine of CFAF 10,000,000. The fine shall be payable in proportion to the number of documents or the number of times required information is withheld, omitted, incomplete or inaccurate. ”

Article 54. —

The provisions of point 9 of Article 31 of the above-mentioned Code have been amended as follows:

“Article 31.

9 —

a) Financial institutions, including credit institutions and similar bodies, insurance and reinsurance companies, shall be required to identify the information on the tax residences of all financial account holders and, where applicable, of all natural persons controlling them.

b) They shall communicate to tax authorities, by means of a statement in accordance with the template prescribed by the tax authorities, all the information required for the application of the agreements concluded by Senegal allowing automatic exchange of information on financial accounts for tax purposes and, where applicable, the absence of information.

The statement shall contain, in particular, information on the identity of the financial account holders and, where applicable, the natural persons who control them, as well as financial information on these accounts, including income from transferable securities, account balances, the surrender value of insurance and annuity contracts, capitalisation bonds or contracts and similar investments, and the proceeds of sales or financial asset redemptions.

c) Financial institutions shall also be required to keep records of actions taken to comply with the obligations referred to in this Article, as well as supporting documents, self-certifications and other evidence used for this purpose, for a ten-year period following the end of the period during which they must provide the information required under b) of 9 of this Article.

d) The obligations stipulated in Paragraph 9 of this Article shall be specified by an order of the Minister of Finance.

Article 55. —

The provisions of point 6 of Article 220 a) of the above-mentioned Code have been amended as follows:

“Article 220 a).

6.

The terms and conditions of the application of the tax compliance levy shall be laid down by an order of the Minister of Finance. ”

Article 56. —

The provisions of Article 516 of the above-mentioned Code on “Pari Mutuel” are amended as follows:

“Article 516. —

Pari-mutuel betting tickets at race-courses and off-course, lottery tickets, games of chance and predictions broadcast on written or audiovisual media are subject to a stamp duty of 7% on the amount of the sums involved in a single race or game.

The amount of this duty is deducted at source by the organiser, under its own responsibility. It shall be paid to the relevant collection office **within the first 15 days of the month following the month in which the deduction was made.**”

Article 57. —

The provisions of points 1, III and VI of Article 633 of the above-mentioned Code shall be amended as follows:

“Article 633.1.

1. All taxpayers shall file a statement of existence within twenty (20) days of the opening of their establishment or the commencement of their operations.

The declaration of existence is sent to the head of the relevant tax department by registered post in duplicate.

It must indicate, in particular, the taxpayer’s first and last names or company name, address and occupation, and, if applicable, the number of his bank and postal current accounts, as well as the location of his production plant(s) and sales outlet(s).

The declaration must be accompanied, where applicable, by a copy of the company’s articles of association, trade register, commercial or professional lease or any other document justifying the occupation.

Legal entities, whatever their form and activity, whether or not they are subject to tax, are required to identify their beneficial owners and to keep a register for this purpose at their registered office in Senegal.

The beneficial owners registry shall contain accurate and up-to-date information on:

- d) The identity of the beneficial owners;
- e) The nature, terms and extent of the control exercised over the legal person; and
- f) The date on which the natural person(s) became, or ceased to be, the beneficial owner(s) of the legal person.

The expression “beneficial owner” of a legal person shall mean:

a) The natural persons who ultimately hold, directly or indirectly, more than 25% of the shares or voting rights in the legal person or those who, by any other means, exercise effective control over the legal person; or failing this and exceptionally;

b) The natural person who directly or indirectly occupies the position of principal manager of the legal person where no natural person mentioned above is identified as the beneficial owner.

For companies in the extractive sector value chain covered by Decree 2020-791 of 19 March 2020 on the Beneficial Owners Registry, the percentage of shares or voting rights referred to in a) shall be set at 2%.

Any beneficial owner of a legal entity and any legal entity or legal arrangement directly or indirectly holding a stake in a legal entity shall be required to provide the legal entity, on request or otherwise, with the information and supporting documents required to identify the beneficial owners. In the event of a change of beneficial owners, they shall provide the said information and documents within thirty (30) days. Any failure to comply with this obligation must be reported to the head of the relevant tax department.

The information contained in the beneficial owners registry and the supporting documents relating to a beneficial owner shall be kept for a minimum period of ten (10) years following the end of the year in which the beneficial owner ceased to be a beneficial owner, or following the end of the year in which the legal person ceased to exist. The obligation to keep the registry shall be incumbent on the directors of the legal entity.

Legal entities or, where applicable, their agents, shall be required to declare to the tax authorities, using a form provided by the tax authorities, the details of their beneficial owners:

d) When they file their declaration of existence, in the case of legal entities subject to this obligation by virtue of this article, or in the month following their incorporation, in the case of other legal entities;

e) At the time of their annual income tax return, in the case of legal entities subject to tax, or on the anniversary of their incorporation, in the case of other legal entities;

f) Within fifteen (15) days of the legal entities becoming aware, or should have become aware, of the event making it necessary to amend the information on beneficial owners.

The content of the information on the identity of beneficial owners, as well as the terms and scope of the control of legal entities, shall be specified by order of the Minister of Finance.

Legal entities created before the entry into force of these provisions shall have until 31 December 2021 to comply with the provisions on information on beneficial owners. ”

“Article 633.III —

III. Any change in the characteristics of the holding and any change in the beneficial ownership of a legal entity must be declared under the conditions set out in I and II of this Article. ”

“Article 633. VI. —

VI. Natural or legal persons resident in Senegal who act as administrators or managers of trusts or other similar legal arrangements set up outside Senegal shall declare the following to the head of the tax department of their tax domicile within twenty (20) days of their appointment:

The existence, terms and content of the legal arrangements of this type that they manage or administer; the identity of the persons mentioned in the legal arrangement; and

The identity of the beneficial owners, i.e. the identity of the legal settlers, the trustees, administrators or managers, the protectors where applicable, all the beneficiaries or categories of beneficiaries and, in general, any other natural person who ultimately exercises effective control over the said legal arrangements within the meaning of Law No. 2018-03 of 23 February 2018 on the fight against money laundering and terrorist financing.

Where one of the persons having one of the qualities listed is a legal person or a legal entity, the beneficial owners thereof shall be identified as the beneficial owner of the legal arrangement.

This obligation shall also be incumbent on administrators, managers, beneficiaries or trustees resident abroad of legal entities which own property, rights and shareholdings in Senegal. In this case, they shall appoint a representative in Senegal.

Any change in the allocation of profits, assets, rights or shareholdings in the **legal structure, any change in the persons mentioned in the legal structure or its beneficial owners and any transfer of ownership** shall be declared within twenty (20) days.

Information on the identity of the beneficial owners shall be recorded in a special register, which must be kept up to date with all changes in the beneficial ownership of the trust or similar legal arrangement, and must be presented at the request of the tax authorities.

Any beneficial owner of a legal structure and any legal entity or legal structure mentioned in a legal structure shall be required to provide the trustee, administrator or manager, on request or otherwise, with the information and supporting documents required to identify the beneficial owners. In the event of a change of beneficial owners, they shall provide the said information and documents within thirty (30) days. Any failure to comply with this obligation must be reported to the head of the relevant tax department.

The information contained in the beneficial owners registry and supporting documents relating to a beneficial owner shall be kept for a minimum period of ten (10) 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 trust, or similar legal arrangement. The obligation to keep the registry shall be incumbent on the administrators of the legal entity residing in Senegal or on the representative of the administrators in Senegal when they reside abroad.

Administrators of the legal entity residing in Senegal or representatives of administrators in Senegal when they reside abroad shall have until 31 December 2021 to comply with these provisions.

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Article 58. —

The provisions of Article 667 III d) of the above-mentioned Code are amended as follows:

“*Article 667 III.* —

d)

1. Failure to comply with the identification obligation provided for in a) of Article 31.9 shall be punishable by a fine of CFAF 5,000,000 per account. The same sanction shall apply in case of failure to comply with the declaration obligation provided for in b) of Article 31.9, including in the event of late declaration or incomplete, insufficient or erroneous declaration.

2. Natural persons or entities who, as account holders, do not communicate to Financial Institutions the self-certification enabling them to establish their tax residences and, where applicable, those of the natural persons who control them, in accordance with Article 31.10 shall be punishable by a fine of CFAF 10,000,000 per account holder. The same sanction shall also apply in the event of communication of an incomplete, insufficient or erroneous self-certification.

The act of an account holder or a natural person who controls it deliberately self-certifying erroneous information constitutes forgery punishable by sanctions provided for in Articles 135 and 136 of the Penal Code

3. Failure to retain the information and documents provided for in c) of Article 31.9 shall be punishable by a fine of CFAF 3,000,000 per year and per account subject to declaration. For the application of this provision, non-compliance with the retention period provided for in the said article shall be tantamount to failure to preserve.

4. If a natural person or entity, including an intermediary or service provider, enters into an arrangement or adopts a practice of which at least one purpose can reasonably be considered an attempt to avoid one of the obligations provided for in Articles 31.9 and 31.10, the arrangement or practice shall be deemed non-existent and the obligations provided for in the said articles shall apply. The natural person or entity shall also be sanctioned with a fine of CFAF 15,000,000.” ”