

DEDUCTIBILITY UNDER CAMEROON'S TAX LAWS: ENSURING HEALTH AND RESILIENCE ECONOMY DURING AND POST COVID -19

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ABSTRACT

This article studies the efficiency effects of granting deductions for business expenses. It is shown that much depends on whether the expenses are required for increasing taxable income. Businesses are permitted to reduce taxable income by certain necessary and ordinary business expenditure. However, the COVID-19 crisis has exposed the vulnerabilities of individuals, societies and economies, calling for a rethink of how economic and social activities are organised. built around such principles can help reshaping the post-crisis economies and societies through fiscal responses; specifically, business tax deductions. The reading of books, articles and website consultation reveal that the objectives for tax deductions reforms are not attained due to the fact that some business tax deduction measures may be particularly vulnerable to fraud. Also, there may be possible loopholes created as a result of the speed of decision-making and policy implementation in response to the covid-19 crisis. This may lead to tax avoidance. The article suggests amongst others, solutions measures. to ensure there are no loopholes; and enhancing cooperation especially amongst the CEMAC Sub-region amendments to existing laws or passing new laws, The implementation of this recommendations will help produce the desired objective of business tax deductions during the pandemic.

Keywords: Business, Tax; Deductions, COVID-19, Responses, Cameroon

INTRODUCTION

Generally, tax is charged not on the gross profit of the trade or business but on the full amount of the balance of the profits or gains which is arrived at by deducting the expenses involved in obtaining the income.ⁱ Thus, under Law N°2019/023 OF 24 December 2019 instituting the General Tax Codeⁱⁱ, the expenses of managing businesses are deductible.

Sine March 6, 2020, that the first case of coronavirus disease 2019 (COVID-19) was officially reported in Cameroon, a series of measures have been takenⁱⁱⁱ amongst which are fiscal measures. According, the importance this article lies on the income tax's central role in revenue generation, its impact on the distribution of after-tax income, and its effects on a wide variety of economic activities. Accordingly, Given the fact that COVID-19 pandemic has imposed unprecedented negative consequences on the Cameroonian economy. To reduce the spread of the virus, the government taken a range of fiscal and legislative measures, including the a rethink on business tax deductions This is due to the fact that the pandemic equally took a toll on a majority of sectors across the economy, impacting wages, consumer spending, and profitability for businesses Thus, taxation measures can be used in shaping the economic growth and development of a country:^{iv} The importance of taxation has been explicitly described by the U. S Supreme Court in the following words:

“One great power upon which the national fabric is based. It is as necessary to the existence of the states as prosperity is to a natural man. It is not only the power to destroy; it is also the power to keep it alive.”^v

This importance is only heightened by recent fiscal policy responses by which the government is going to extraordinary lengths to see that businesses remain solvent, individuals remain employed or financially sound, and overall economies remain competitive,^{vi}

In this respect, providing assistance to businesses through tax deduction during the COVID-19 will have significant positive impact on businesses both during the pandemic and over the longer term.^{vii} These included a holistic approach to tax relief measures that will help stabilize the economy, this policy would support taxpayers facing cash-flow constraints and hardship, reduce immediate burdens and support other government actions while continuing to bring in revenue to fund government. In the recovery period, these will remain important objectives but there may be a shift in balance towards revenue collection, including increasing compliance

activities, albeit not necessarily an immediate return to previous business as usual operations. In this article we first describe what tax deductions are, next, we discuss the rationale for deductions as part of the tax code. The principles governing deductibility, standard deductions are addressed, we explore the allowable and unallowable deductions, fiscal measures with respect to deductions in time of the COVID -19 pandemic, the importance of such measures, the hindrances

Finally, we offer a forward-looking perspective to discuss the crisis' implications for multi-level governance as well as points for policy-makers to consider as they build more resilient economy during and after Covid-19.

DEFINITION OF KEY CONCEPTS

Covid - 19

Coronavirus disease 2019 (COVID-19) is defined as illness caused by a novel coronavirus now called severe acute respiratory syndrome coronavirus (SARS-CoV-2; formerly called 2019-nCoV), which was first identified amid an outbreak of respiratory illness cases in Wuhan City, Hubei Province, China. ^{viii} It was initially reported to the WHO on December 31, 2019. On January 30, 2020, the WHO declared the COVID-19 outbreak a global health emergency. On March 11, 2020, the WHO declared COVID-19 a global pandemic, its first such designation since declaring H1N1 influenza a pandemic in 2009. ^{ix}

As of now, researchers know that the coronavirus is spread through droplets and virus particles released into the air when an infected person breathes, talks, laughs, sings, coughs or sneezes. Larger droplets may fall to the ground in a few seconds, but tiny infectious particles can linger in the air and accumulate in indoor places, especially where many people are gathered and there is poor ventilation. This is why mask-wearing, hand hygiene and physical distancing are essential to preventing COVID-19.

COVID-19 symptoms include: cough, fever or chills, shortness of breath or difficulty breathing, muscle or body aches, sore throat, new loss of taste or smell, diarrhea, Headache new fatigue, nausea or vomiting and congestion or runny nose

At the time of this research the records for Coronavirus in Cameroon stands at 80,858 Deaths:1,324 Recovered:78,224 ^x

Business

In the absence of a definition in the income tax law, the term “business” will have its ordinary meaning.^{xi} In broad terms, a business is a commercial or industrial activity of an independent nature undertaken for profit^{xii}

The concept of a business may overlap with the notion of employment for tax purposes.^{xiii} This will include some independent contractor relationships (i.e., relationships that are within the ordinary meaning of business). Where employment is defined in these broad terms, the definition must be coordinated with the definition of business so that the same economic activity is not characterized as both.

While the word business is commonly used in income tax laws, some authors use other expressions, such as “entrepreneurship”, to identify independent economic activity.^{xiv} However, business should be defined to include both trade and professional activities.

The taxation of business in Cameroon by section 2 of the Tax Code which states; “A tax shall be levied on all profits or income made by companies and other corporate bodies.”

Thus, the following companies shall be liable to company tax:

a)- joint stock companies and limited liability companies, co-operative societies, public establishments or bodies, irrespective of their object, public limited liability companies, joint stock companies, co-operative societies and their unions; public establishments, State bodies with financial autonomy and any other corporate bodies carrying out one or more gainful activities.

b) Civil companies(i) even if they do not fall under the type of companies referred to in paragraph 1, civil companies carrying out commercial, industrial, non-industrial or agricultural activities, in particular:

- when they are involved in intermediary transactions for the purchase or sale of property or businesses, shares or holdings of real estate companies, or when they buy generally on their own behalf assets intended for resale;

- when they parcel and sell lands acquired in return for payment following development and provision of services;

- when they give out for rental a commercial or industrial establishment possessing the furniture and equipment necessary for its operation, whether the rental comprises or not all or part of the intangible elements of the goodwill;

(ii) civil companies whose members include one or more companies with share capital or which opted for this form of taxation;

(iii) civil companies which have opted for company tax under the conditions fixed for partnerships.

(c) Partnerships which have opted for company tax e.g partnership firms, limited liability partnerships, joint-ventures, financial syndicates. However, the option is irrevocable and may not be applied by unincorporated companies or by partnerships originating from the previous transformation of partnerships. For the option to be valid, it shall be signed by all the partners and notified to the tax inspector of the area within three months of the beginning of the financial year. Failing an option, the company tax shall be levied on the share of profits corresponding to the rights of: partners in limited liability partnerships, partners not indefinitely liable or whose names and addresses have not been communicated to the Administration in partnership firms, joint-ventures and financial syndicates.

(d) Public establishments and regional and local authorities: Public establishments other than scientific, educational and aid bodies, as well as associations and regional and local authorities not subject to company tax by virtue of another provision, due to the rental of their built-on and non-built-on estates, revenue from floating capital not liable to tax on revenue from the transferable securities they possess as well as any other gainful activity.

These provisions shall apply to the companies, associations and bodies referred to in Section 4. Such revenue and activities shall be subject to separate accounting in accordance with the rules and procedures governing commercial law

Section 5 of the Tax Code enables the profits of any company to be assessed to income tax wherever they have been made if they are derived from, brought into or received in Cameroon. It is immaterial whether or not all or any part of such profits have been brought into or received in Cameroon; they shall be deemed to accrue in Cameroon and accordingly will be taxable.

It should be noted that the profits of a company other than a Cameroonian Company are treated for the purposes of Cameroon's tax statutes as not derived from Cameroon to the extent to which they are not attributable to operations within Cameroon.

Deductibility

Cameroon tax laws do not define deductibility. Deductibility are expenses which are laid out for the purposes of earning income and are allowable if such expenses are whole, necessarily and reasonably laid out for the purpose of the income. Simply stated, deductions reduce taxable income. Each deduction reduces tax liability by the amount of deduction times the tax filer's marginal tax rate. The tax savings from deductions are generally equal to the tax filer's marginal tax rate times the amount of the deduction. So higher-income tax filers typically benefit more than lower-income tax filers from deductions. Under the Cameroon tax laws, taxable business income is calculated by comparing the value of the net assets in the balance sheet of the taxpayer at the end of the year plus dividends distributed by the taxpayer during the year with the value of the net assets in the balance sheet of the taxpayer at the end of the previous year.^{xv} A positive difference constitutes taxable business income, while a negative difference is a business loss. While the two models may sound quite different, in practice, they are similar in man6.-(1)The taxable profits shall be the net profits determined according to the results of all transactions of any kind effected by the undertaking during the period of assessment including, in particular, the transfer of any assets in the course of or on the completion of trading.(2)The net profit shall consist of the difference between the value of the net assets at the closing and opening of the period whose results will serve as a basis for assessment, reduced by the additional assets brought in and increased by the drawings effected by members during this period. By net assets is meant the surplus of the value of assets over the total liabilities made up by third-party claims, depreciation and justified provisions y respects. Deductions serve four main purposes in the Tax Code. First, they can account for large, unusual, and necessary personal expenditures, such as the deduction for extraordinary medical expenses. Second, they are used to encourage certain types of activities, such as homeownership and charitable contributions. Third, they account for and ease the burden of paying for non-federal forms of taxes, such as state and local taxes. Fourth, deductions serve to adjust for the expenses of earning income, such as deductions for business-related expenses.^{xvi}

CONDITIONS FOR BUSINESS TAX DEDUCTIBILITY UNDER CAMEROON TAX LAWS

There are a number of conditions for business expenses to become allowable. These conditions are; the expenditure must be of a revenue and not of a capital nature; the expenditure must be incurred, wholly, exclusively, reasonably and necessarily for the purpose of the trade; the expenditure must not be specifically prohibited by legislature.

The expenditure must be of a revenue and not of a capital nature

Often, deductions are subject to conditions, such as being allowed only for expenses incurred that produce current benefits. Otherwise stated, that the expenditure must be of a revenue and not of capital nature only begs the further question as to what exactly is revenue expenditure or capital expenditure. The distinction between revenue and capital expenditure is not expressly stated in the Cameroonian Tax statute. However, current expenses which are expenses needed to keep the business running are fully tax deductible.^{xvii} These taxable variables include, overhead expenses, sundry remunerations and processions of services, rental expenditure, taxes, charge and fines, insurance premiums, Acts of liberality, gifts and subsidies, financial cost, actual loses depreciation provisions etc

This rule to a great extent tallies with the ordinary principles of commercial accounting one of which is to the effect that, the total revenue receipts of any entity of a given period less total revenue expenses relative to that period, is the net income of the entity for the period.^{xviii}

However, the overriding distinction between capital and revenue expenditure is of fundamental importance in deciding whether or not an expenditure ought to be deductible.^{xix} But in view of the silence by the Cameroon tax statute on the matter, recourse had to decided cases to see how the questions has been contended with. Due to the porosity of Cameroonian Cases reference would be made to foreign cases.

As one Law Lord puts it “*I think one has to keep in one’s mind, that in dealing with any business, one has two sorts of capital: one the fixed capital which is laid out in the fixed plant whereby the opportunity of making profits or gains is secured, and the other the circulating capital which is turned over and over in the course of the business which is carried on*”. In yet another case, the question has been determined by reference to the functional aspect of the asset. “*I think it is not a bad criterion of what is capital expenditure as against what is income*

expenditure, to say that capital expenditure is a thing that is going to be spent once and for all, and income expenditure is a thing that is going to recur every year.^{xx}

This only goes to show that the dividing line between what is income expenditure and capital expenditure is a very blurred one which can easily cast doubts upon decided cases. Evident from the views of some English Law Lords, no sharp distinction can readily be drawn between what is revenue and capital expenditures. Some cases it has been told lie on boarder between the two and this boarder is not like a line clearly marked out.^{xxi} It is a blurred and undefined area in which anyone can get lost. Everyone cannot tell the difference except in the imaginary cases and then everyone is in doubt. Yet another Law Lord said “*there have been many cases which fall on the border line. Indeed, in many cases, it is almost true to say that the spin of the coin will decide the matter almost satisfactorily as an attempt to find reasons*”^{xxii}

Lord Morris of Borth-y-Gest has stated: “The decided cases show that in the diverse and varying sets of circumstances in which decision has been called for as to whether payments have been of capital or of revenue nature no all-embracing formula has been evolved.” No touchstone has been devised.

Here again the problem is that the two terms cover such a multifarious area that it is extremely difficult to provide a single definition that will take care of all the dimensions of a subject which is becoming ever more sophisticated and complicated.

Lord Morris of Borthy-Gest’s test was followed with equal force by Lord Dunedin and upon whose test improvement was made by Lord Gave when he said “when an expenditure is made, not only once and for all, but with the view to bringing into existence an asset or an advantage for the enduring benefit of a trade, there is very good reason in the absence of special circumstance leading to an opposite conclusion for treating such expenditure as properly attributable not to revenue, but to capital”^{xxiii}.

The above test by Lord Gave has not however been devoid of criticism as is indicative of the observation of another law lord when he said, it invites the further question. How long does it take to be an enduring advantage when you are dealing with a purely long-term agreement? I am sure he said, when Lord Cage made the observation, he did not have in mind anything in the nature of a long-term trading agreement.

In the light of the foregoing, it seems the distinction between revenue and capital expenditures is an erratic one which is more likely to lead to confusion. The important thing would be for the courts to discard the emphasis on the distinction and consider instead, the nature of the asset and if desirable in any particular case, to classify it as capital or revenue expenditure based not mainly on the brevity of its life which may not be very relevant. It has even been said in one case that the determination of what is capital expenditure and what is income expenditure must depend rather on common sense than the stick application of any single legal principle.^{xxiv} In one case the cost of obtaining a new character which provided a better administrative structure for the company was held to be deductible because what mattered was the nature of the advantage for which the money was spent. The money in question was spent to remove restrictions which were preventing profits from being earned. It created no new asset, and it did not even open new fields or trading which had previously been closed to the company. In yet another case, it has been held that the transaction merely put the company in the position to get sand and therefore not deductible being a capital asset and not a stock-in-trade.^{xxv}

No new inroad, nor all prevailing or general principle was laid down in spite of Megarry J's three tier test. The test goes thus: what is the nature of the payment; what is to be obtained to be used, relied on or enjoyed.^{xxvi} An asset can in one case be a revenue expenditure while a capital expenditure in another irrespective of the similarities between the facts.^{xxvii} It can be suggested in view of this article that in classification the Cameroonian legislature should as far as tax matters are concerned, endeavor to provide a statutory classification so as to enable the tax payer know exactly what expenses are deductible or not. This undoubtedly tallies with one of the characteristics of a good tax system, namely, simplicity cost of administration and compliance.

The Cameroonian legislature should therefore address its mind to this issue and then provide a static yardstick for the distinction in question.

The expenditure must be incurred, wholly, exclusively, reasonably and necessarily for the purpose of the trade;

The Cameroon tax laws make no separate mention of expenses incurred wholly, exclusively reasonably and necessarily for the purpose of earning the income. However, the Tax Code^{xxviii} determines which deductions qualifies for and which expenses do not qualify for deductions.^{xxix} Such an approach poses significant definitional issues. What expenses are ordinary and

necessary? The phrase deals with what expenses are appropriate to the nature of the business, whether the expenses are of the sort expected to help produce income and promote the business, and whether the expenses are not lavish and extravagant.

Note that under this concept, the same sorts of expenses are generally deductible by business entities and individuals carrying on a trade or business. To the extent such expenses relate to the employment of an individual and are not reimbursed by the employer, the amount may be deductible by the individual.

The words, necessarily and reasonably were added to the test for allowable expenses possibly to stem the general tendency towards high and unreasonable spending. It was expressed “*in many cases it may be difficult to establish as a fact that the expenditure was given wholly and exclusively for the purposes of the trade, rather than satisfying the moral obligation felt by the trader.*” The problem to contend with here is, when a business decides to buy two cars instead of one, for its business, how the tax officials assess the reasonableness of the expenditure. Again, it is manifestly unreasonable to pay a messenger a clerical officer’s salary in order to claim a deduction and pay less tax. The various deductible allowable expenses which must generally be an integral part in the production of the income are provided^{xxx}

Allowable Deductions

According to section 7 of Cameroon’s General Tax Code, net taxable profit is established after the deduction of all charges directly entailed by the exercise of activities subject to assessment. The deductions include the following;

Management expenses

This includes all of the basic expenses necessary to run a business, these constitute overhead expenses like expenses on staff, labour, offices, equipment and furniture, sundry and exceptional expenditure, insurance premiums, acts of liberality, gifts and subsidies. Specifically, the following expenses shall be treated thus:

-The remuneration granted to salary and wage-earners is deductible from the results in so far as they are not excessive in comparison to the service rendered, correspond to effective work, and are in conformity with conventional norms. This provision applies to all direct and indirect remuneration, including compensations, allowances, and benefits in kind and reimbursement of expenses. Nevertheless, a deduction to the tune of 15% shall be made

on the basic salary excluding other social welfare contributions representing only employers' dues paid abroad for the compulsory constitution of the pension of an expatriate.

However, attendance fees granted to the members of the board of directors can be deductible only in so far as they represent remuneration for work done.

Automobile expenses

Most people have occasion to drive a car while conducting business. Business-related automobile mileage is tax deductible, with the exception of commuting to and from work. Any other mileage from the place of business to another location can be considered a business expense as long as the travel was made for business purposes.^{xxxii}

Deductions based on International Agreements

The following shall be regarded as expenses on condition that they are not exaggerated:

-Head office overheads for operations carried out in Cameroon and the remuneration of certain effective services (studies; technical, financial or accounting assistance) provided to Cameroonian firms by foreign or Cameroonian natural persons or corporate bodies. The sum should not exceed 5% of the taxable profit before deducting the expenses concerned. The ceiling stipulated above shall be fixed at 2.5% of the turnover for the firms specialized in public works and 7.5% for design firms operating in accordance with the regulations relating to design firms and consulting engineers. purchased or sold for firms located in Cameroon within the limit of 5% of the purchase or sales price. This commission must form the subject of a specific bill attached to that of the suppliers or clients.

-The amounts paid for the use of valid patents, brands, designs and models within the overall limit of 2.5% taxable profit before the deduction of expenses claimed. This ceiling does not apply to the amounts paid to firms not participating directly or indirectly in the management or capital of a Cameroonian firm. Commission or brokerage on goods When their partners on the payroll of the firm are on leave, companies shall be authorized to deduct from their profits, on condition that the journey was made, the transport expenses to and

from of the said partners, their spouses and dependent children. Under no circumstances shall such expenses give rise to a depreciation allowance account.

Rental Expenditure

The amount for rentals granted to a company is regarded as part of the expenses on condition that it is not exaggerated in comparison with the rentals usually paid for similar property or facilities. Nevertheless, when a partner has at least 10% of the holdings or shares of a company, the proceeds from the rentals other than those from the property granted to such company shall not be considered as expenses of the firm. For the implementation of this provision, the holdings or shares held as property or as usufruct by the spouse, relatives in the ascending or descending line of the partner, shall be deemed to belong to the partner.

Taxes, charges and fines

Only the professional taxes issued for collection during the financial year and which are to be borne by the firm in relation to the operations carried out in Cameroon is subject to deduction.

Health insurance benefits provided to employees are also tax deductible.

This includes:

- insurance premiums contracted for the company where the very risk covered leads directly to a net reduction of assets;
- insurance premiums which, themselves, represent operating costs; -sickness insurance premiums paid to local insurance companies for members of staff and their spouses and dependent children, where the reimbursement of expenses to the very persons fails to appear under deductible charges;
- Premiums paid by firms to local insurance companies under contracts relating to career wind-down allowances. Deduction of such contributions is admitted on condition that it is a general insurance contract, that is, one that concerns the entire staff or one or several specific categories of the staff. But the sums raised by the company with a view to taking out its own insurance policy shall not be deductible from taxable profits. Contributions by employees under the National Social Insurance Fund, cannot be said to be made for the purposes of the trade, and yet

it would be inequitable to require such contributions to be made out of the taxed incomes of the employee.

- Accordingly, provision exists for the deduction of such contributions in so far as the amount is reasonable, for it can hardly be expected that an employee will be allowed deduction for having contributed about of his income to any such fund. This provision however is a reflection of the welfarist nature of the Cameroonian tax law, as the said contributions will go to provide a livelihood to those who are worse-off.
- This seems an advantage to the employees from such schemes in the sense that they will not be required to move from one scheme to another in the course of their changing jobs. Moreover, the fact that funds from such schemes will be of tremendous importance to the employees or their dependents goes to further portray the vertically equitable nature of the Cameroonian tax law. The mere fact that these contributions are allowable deductions upon approval of the NSIF, serves as an incentive to other employers and employees to set up similar schemes whose ultimate advantage will be the redistribution of income in the society.

Charitable contribution

Acts of liberality, gifts and subsidies does not represent the charges deductible from profits. However, payments made to research and development bodies and to collective philanthropic, educational, sports, scientific, social and family institutions and bodies, on condition that the latter are situated in Cameroon, is deductible as soon as there is proof of payment and as long as they do not exceed 0.5% of the turnover for the financial year. Donations, grants and subsidies awarded to clubs participating in elite national competitions, or to recognized organizations responsible for the organization of official sports competitions are deductible when they are justified and within the limit of 5% of the annual turnover. However, deductions are allowable when justified, and the sums granted to;

The State or Decentralized Territorial Collectivities for the fight against HIV/AIDS; Donations made to combat the COVID-19 epidemic are fully deductible.

This deduction directly reduced a taxpayer's taxable income, and thus reduced income taxes owed to the government. All these may not however affect the issue of deductibility in taxation if the donation was in accordance with Section 6.-(1) of the Tax Code 2019 which is to the

effect that taxable profits shall be the net profits determined according to the results of all transactions of any kind effected by the undertaking during the period of assessment including, in particular, the transfer of any assets in the course of or on the completion of trading.(2)The net profit shall consist of the difference between the value of the net assets at the closing and opening of the period whose results will serve as a basis for assessment, reduced by the additional assets brought in and increased by the drawings effected by members during this period. By net assets is meant the surplus of the value of assets over the total liabilities made up by third-party claims, depreciation and justified provisions However, the goal of enacting such a tax deduction was to encourage contributions to charitable organizations by individuals

Financial Costs

Interest on sums of money left or placed at the disposal of the company by partners in addition to their capital shares, irrespective of the form of the company, within the limit of those calculated at the rate of Central Bank advances increased by two percentage points are deductible. However, such deduction is possible with respect to partners who directly or indirectly own at least 25% of the share capital or corporate voting rights only if:

- The sums of money made available by all the partners do not exceed two and a half times the amount of equity. Otherwise, interest on the excess amount shall not be deductible;
- Therefore interest paid to the said partners does not exceed 25% of profit before corporate tax and before deduction of the said interest and amortizations taken into account in determining such profit. Otherwise, the excess amount of interest is not deductible.

Actual losses

The following are deductible from profits: -actual losses recorded on the fixed assets or feasible assets;

Losses due to damage duly established and validated in the presence of a taxation officer with at least the rank of an inspector, under the conditions specified in the Tax Procedures Manual. The actual losses from fixed and liquid assets shall be deductible from the profits.

Depreciation

Depreciation for tax purposes is determined by tax statute and has nothing to do with the actual value of equipment at year end. Instead, the amount claimed as depreciation is designed to spread the cost of the equipment over time and maximize the annual tax deductions associated with it. Depreciation actually computed in consideration of the probable period of usage according to the norms of each operation, including those which might have already been deferred in times of deficit without using rates which may not exceed those fixed as follows: Small equipment and tools The threshold for small equipment and tools which should be recorded under assets is fixed at five hundred thousand (500, 000) CFA francs.

Miscellaneous

Some other miscellaneous expenses that may be deductible in this category include computer software, charitable contributions, repairs and improvements to business property, bank service charges, consultant fees, postage, and online services. With regard to repairs of premises, plant, machinery fixtures, mention should be made of the fact that the said repairs should be of a revenue and not of a capital nature. The question that arises here is whether in Cameroon, a trader who buys assets in a state of disrepair and then incurs expenses in putting them in repair is allowed to make a deduction of the expenses thereof. The general rule is to the effect that the cost of repairs is part of the cost of acquiring the assets, that is, capital expenditure. Thus it has been held that sums spent to remedy defects in the ship as she stood at the time of purchase were capital expenditure and so could not be deducted. It is possible however that the Cameroon courts will arrive at decisions in pursuance of the above-mentioned general rule. In a subsequent case, whose decision the Cameroonian courts are more likely to follow, its allowable deduction for the simple reason that the purchase price of the cinema had not been reduced on account of the disrepair.

Provisions constituted to meet clearly specified losses or charges rendered probable by the course of events, provided that they are shown in the annual accounts and appear in the statement of provisions specified in Section 18 hereafter. Concerning credit establishments, with the exception of provisions for bad debts whose allocation is optional, the deduction of provisions for bad debts and doubtful commitments shall be effected as follows:

- two years for bad debts and doubtful commitments whose risks are not covered either by collateral securities or State guarantee. In this case, deductions may not exceed: 25 % for the first year, 50 % for the second year, 25 % for the third year. The situation of these provisions must be definitely determined at the end of the third year of their constitution, with the exception of those which concern bad debts and doubtful commitments brought before law courts. The technical provisions of insurance companies, constituted in accordance with the rules and methods prescribed by the code of the inter-african Conference on Insurance markets (CIMA). In no event shall any provision be constituted for charges accountable, by their nature, in the year in which they are incurred. The objective of bad and doubtful debts being allowed deductions is possibly to ensure an equitable distribution of income in so far as the tax payer can discharge the onus of proving that the debts are bad. The tax payer must also show that the debt was for the purpose of the trade and not in the nature of capital withdrawn from the trade or business. It may however happen that a debt in respect of which a deduction was allowed, is subsequently paid off in whole or in part. In such a case, the amount received is treated as a trading receipt at the time of its receipt. Thus a deduction of bad and doubtful debts is allowed so as to leave the tax payer with a reasonable amount of his income as it would be manifestly unjust to refusal the tax payer a deduction in respect of amounts which he disposed of in good faith and of which there is no likelihood of his retrieving.

Claims and debts expressed in foreign currency

Losses incurred during exchange transactions may not require the accumulation of deductible provisions. However, currency conversion margins, claims and debts expressed in foreign currencies, as opposed to the amounts initially entered into the accounts, is assessed at the end of each financial year, taking into account exchange rates which are used to determine the taxable turnover for the financial year. Currency conversion margins concerning less than one year old debts expressed in foreign currencies is deductible in determining the taxable turnover for the same financial year. But currency conversion margins concerning long-term debts expressed in foreign currencies is deductible at the rate of actual reimbursements. The same shall be true for short and medium term claims.

Property and merchandise required for production purchased in their country of production and which have been cleared at the customs, as well as remuneration for services rendered in relation thereto is be deductible. (3) Any state or territory wherein the tax on income of a natural person or legal entity is less than a third of that is paid in Cameroon, or any state territory considered not to be cooperative in matters of transparency or ex-change of information required for fiscal purposes by international financial organizations shall be considered a tax haven.^{xxxii}

According to section 13 of the Tax Code where a joint stock company or a limited liability company owns either registered stock in a joint-stock company or shares in a limited liability company, the net proceeds of the shares in the second company paid to the first during the financial year is deducted from the total net profit of the latter, less a percentage for costs and charges.

This percentage is fixed at 10% of the total amount of the said proceeds. However, this provision applies only: (1) when the stocks or shares owned by the parent establishment represents at least 25% of the capital of the subsidiary firm. (2) When the parent and subsidiary firms have their registered office in a CEMAC State. (3) When the stocks or shares allotted at the time of issue are still registered in the name of the participating company which undertakes to retain them for two consecutive years at least in registered form. Any breach of this undertaking shall result in the assessment of the improperly exempted income, without prejudice to the penalties enforceable for inadequate returns

Start-up

The Cameroon Tax Code does not provide any mechanism for the deduction of start-up costs, but these may be deductible over a period of two to five years based on to the accounting principles of the Organization for the Harmonization of Business Law in Africa (OHADA).^{xxxiii}

Any payment made for the purchase of intellectual property (within the Central African Economic and Monetary Community) is deductible up to 2.5% of taxable income.

Since the word wholly can be taken to refer to the quantity of the expenditure, then if it can be proved that some non-commercial reason caused the tax payer to pay more interest than he otherwise would have done, it is evident that the payment of that interest can no longer be held to have been wholly and exclusively expended for the purposes of the trade.

Any other expenses incurred wholly, exclusively, necessarily and reasonably for the purposes of the trade or business, the income of which is assessable to tax are allowable deductions.

Disallowable Deductions

There exist certain expenses in respect of which statute has specifically disallowed their deductions. These expenses are more or less the opposite of allowable expenses and are not deductible partly because they are not wholly exclusively reasonable and necessarily incurred in the earning of the profits and partly because they are of a capital nature or because capital allowance is grantable in lieu.

According to FL^{xxxiv} Section 8 a.-(1) the expenses referred to in Section 7 equal to or greater than CFAF 500 000 (five hundred thousand) is not be deductible when paid in cash. The following taxes are also non-deductible:

- Expenses supported by invoices not bearing a single Identification number on the tax payers card, to the exclusion of invoices submitted by foreign suppliers;
- Expenses relating to remunerations of all kinds paid to liberal professionals exercising in violation of the regulations governing their respective profession.

The cost and remunerations of all types posted in the accounts records by a natural persons or legal entity resident or established in Cameroon and linked to transactions with natural persons or legal entities resident or established in a territory or state considered to be a tax haven, is not be deductible in determining the company tax or in-come tax of individuals in Cameroon.^{xxxv}

The fixed allowances which a company grants to its managerial or senior staff as entertainment and travelling expenses shall be excluded from such deductible expenses in the assessment of tax, when they include the usual type of expenses reimbursed to the persons concerned.

The sums paid to the managerial or senior staff of a company as employment or service expenses allowance which do not correspond to a real expense on the duty performed shall be reinstated in the operating results. For the implementation of this provision, managers shall mean active partners and members of partnerships and joint-ventures.

All expenses relating to hunting, angling, the use of pleasure boats, tourist planes and pleasure homes shall equally be excluded from the deductible expenses whether they be in the form of fixed allowances or reimbursement expenses.

- Concerning banking and credit establishments, firms engaged in the investment or management of transferable securities, all arrears, and interest of other proceeds exempt from the tax on income from securities shall be excluded from the deduction above.

What can be deduced here is that, no distinction is drawn between expenditure incurred in the performance of the duties of an office and expenditures incurred in order either to enable oneself to do the job initially or to enable oneself to perform the duties of that office efficiently. Thus, the cost of a house keeper to look after one's family and so enable one to go out to work is not deductible. However, one would suggest that subscription to professional bodies by a local government medical officer should be allowable provided the journals enables him to keep himself properly qualified and thus should not be limited to donations made by companies as provided in 7 of the GTC

The words necessarily and reasonably as has been observed, are added to the test for allowable expenses because of the general propensity towards high spending by certain business units. It was expressed "in many cases it may be difficult to establish as a fact that the expenditure was given wholly and exclusively for the purposes of the trade, rather than satisfying the moral obligation felt by the trade^{xxxvi}". It would be manifestly unreasonable to pay a messenger a clerical officer's salary in order to claim a deduction and pay less. The rigidity of this rule to my mind deserves some amendment for instances exist where a company may incur expenses not expressly for the purposes of its main object but reasonably ancillary to its main object.

The expenditure must not be specifically prohibited by legislature

In Cameroon donations for a political purpose are illegal and the officers in default and any member who voted for the breach shall be jointly and severally liable to refund such sum to the company.

Accordingly, a company must not carry on any business not authorized by its memorandum of association and shall not exceed the powers conferred upon it by its memorandum or this Decree.^{xxxvii} In Cameroon therefore, any expenses incurred by a company for any purpose not expressly provided for in its memorandum, will not be deducted from its profit assessable to

tax.^{xxxviii}In Cameroon, donations for a political purpose are illegal and the officers in default and any member who voted for the breach shall be jointly and severally liable to refund such sum to the company.^{xxxix} Thus payments made to obtain profits are deductible but not payments from profits. An expenditure however needs to be directly related to earning of profits. It is enough that it was incurred for the purpose of maintaining or enhancing the profit earning capacity of the business.

BUSINESS TAX DEDUCTIBILITY POLICY AND REGULATORY RESPONSE DURING COVID-19

Justification for the Response

The coronavirus (COVID-19) pandemic has affected Cameroon's Businesses. Additional support for consumers and businesses may be required both from internal and external sources to allow the country to respond to the crisis and to support an economic recovery. Tax policy makers and tax administrations will play an important role in supporting the wider government response to coronavirus across the crisis.^{xi} Accordingly, Since the objective of tax law generally is to a large extent dependent on societal needs, it would be logical to endeavor to tailor Cameroon's tax policies generally, and policies on deductibility on business taxation in particular, to suit the socio-economic situation in Cameroon.^{xli}

Generally, the aforementioned policy measures seem to be necessitated by the following reasons: Firstly, it has been considered anti-social to live on one's capital and secondly, to borrow from Professor Wheatcroft's words;

“the tax collector requires his money next year as well as this one. He does not want to kill the goose that lays the golden eggs”^{xlii}

Accordingly, one need not over emphasize the justification for such business tax responses, as such measures would maintain the 'goose that lays the eggs' by enhancing business resilience and also ensuring health during and after the Covid-19 pandemic.

Thus, to complement the policies and legislations on business tax deduction, temporary tax deductions measures have been introduced as highlighted below.

Aspects of Business Tax Deduction Measures

The Cameroon legislature in Law No. 2020/0183 of 17 December 2020 provides for rules regarding certain deductions in establishing net taxable profit are amended, including:^{xliii}

-tax deductions or capital allowance on expenses incurred in providing personal protective equipment to employees;

- a further tax deduction for owners of building or business space who reduced or waived rents for small and medium-sized enterprise (SME) tenants; and (iii) an accelerated capital allowance for machinery and equipment, including ICT equipment,

-with respect to the deduction of interest limited to the rate of the central bank rate plus 2% for partner/shareholder loans in addition to their capital shares, further conditions are added, including:

-the existence of a written up and duly registered loan agreement; and the subscribed share capital must be fully paid up;

-with respect to the deduction of losses due to damage duly established and validated in the presence of tax officer, a new rule is introduced for the brewing sector, including that for damages and breakages incurred by companies in the brewing sector, the related losses shall be deducted at a flat rate of 0.5% of the total production volume;

-an extension of the additional year for the deduction of losses carried forward by companies directly affected by the COVID-19 crisis, including that such companies shall benefit, for the 2021 financial year, from an additional year to carry forward losses;

-the establishment of the deductibility of donations made by enterprises in the fight against COVID-19 in determining corporate tax for the financial year ending 31 December 2020;

-the deductibility of capital losses on the sale of receivables for the financial year ending 31 December 2020, for the purpose of determining their taxable profit for the year ending 31 December 2020;

-the deduction of capital losses on the sale of receivables;

-the registration of the sale of receivables at fixed rates; -the removal of the condition for approval under the Investment Code in order to benefit from the fixed duty on the assumption of liabilities during partial asset contribution operations ^{xliv}

-the total deduction for tax purposes of grants made by companies to the State as part of the fight against the COVID-19 health crisis^{xlv}

-Rationalisation of the conditions for deducting losses relating to damages, by introducing a flat-rate deduction threshold for breweries, set at 0.5% of the overall production volume, and opening up the validation of damages to lower-grade staff in the interests of celerity

Relevance of Business Tax Deduction Measures During and post Covid -19

The following relevance are outlined below:

-They affect the yield of revenue which is needed for the economic development of the country.

-They introduce the element of fairness or equity in the tax system as they ensure that businesses with comparable kinds of income enjoy comparable tax treatment in respect of allowance for expenses.

- they ensure business resilience during and after the Covid-19 and recovery in the aftermath of the pandemic.

- they introduce policy for the protection of health during the pandemic

AN IMPORTANT MEASURE TO MAINTAIN THE COUNTRY'S ECONOMY AND ENHANCE HEALTH, BUT BUGGED DOWN BY SOME CHALLENGES

The bad news is that the measures continue to face significant challenges and the disruption continues to evolve, thereby hindering effective and efficient achievement of the desired goals.^{xlvi}

Some hindrances are highlighted here below:

- Firstly, some business tax deduction measures may be particularly vulnerable to fraud, for example where someone sets up a new company with fictitious staff and seeks government support; where someone seeks to dispose of assets before debts can be collected; or where deferred payments (such as payroll taxes or VAT) are siphoned off in fraudulent schemes. In addition, it is possible that the frequent scam approaches that

are now seen (with scammers asking for account details or attempting identify fraud) may also rise in the coming period as the number of different communications with taxpayers and citizens increases in an inevitably more confused environment.

- Secondly, possible loopholes may have been created as a result of the speed of decision-making and policy implementation in response to the covid-19 crisis. This may lead to tax avoidance.
- Thirdly, decisions by policymakers on business tax deductions may also fall short of desired outcomes especially with the disarrayed nature of taxes in Cameroon
- Fourthly, business tax deductions policy may not provide the at short term the expected certainty while longer term measures may create problems for the future, making it more difficult for taxpayers to return to normal conditions
- Fifthly, Covid-19 is a global challenge that requires a global response. International tax cooperation must be part and parcel of a set of effective and well-coordinated multilateral actions to respond to the crisis.
- Sixthly, there is a risk that the post-Covid era will lead to the proliferation of derogatory tax regimes in order to promote the economic recovery. In Cameroon where the tax system is being plagued with a tangled nuance of laws, regulations, decrees and also obsolete taxes, such a proliferation may complexify actual business tax regimes

This consequently calls for a rethink and reconfigure of tax policies including tax deduction to businesses as here below illustrated:

RECOMMENDATIONS

- Introducing new risk measures that may need to be depending on the design of support measures.
- the administration should issue effective targeting and fraud risks detection.
- Introducing stiff penalties to deter further tax abuses

- designing a clear and transparent rapid response plans should there be a major set-back in the containment of the virus, including on a localised basis, to avoid delays, prevent tax cheat.
- amendments to existing laws or passing new laws, wherever possible and whenever compatible with existing legal frameworks, to the extent that measures aims to reduce substantive tax liabilities.
- an urgent cooperation to fight tax evasion and tax avoidance, including illicit financial flows. At the same time, move towards a fairer and more equitable taxation of economic activities at the global level. Also, we recommend actively promoting currency swaps and resilient financial systems, especially within the CEMAC Sub region and the regionalisation of weight of developing countries
- develop strategies for effective registration, assessment, verification and audit, recovery, disputes as well as the supporting functions. This will allow such business tax deduction to be tested and impact evaluated.
- The assessment, evaluation and publication of tax deduction measures should be considered a high priority to safeguard the tax system and improve fiscal transparency.
- Enhance tax deductible policy that focuses on viable existing companies and start-ups;
- Reboot start-up tax deduction policies in order to enhance the potential of innovative new ventures for recovery;
- Include a strong focus on tax deduction on the digitalisation of SMEs and new firms which are considered as cornerstone of recovery in a digital economy;
- Strengthen the forward-looking capacity, resilience and responsiveness of business and entrepreneurship tax deduction policy frameworks
- Strengthening the welfare of employees and taxpayers during the recovery period in light of continuing health risks.

PERSPECTIVE

The challenges and recommendations thus presented, the question may be asked, what perspectives for the future? In effect, how do we go from here and what do we expect in the pandemic-stricken socio- economic environment in Cameroon? All measures taken by the state, albeit distinct from each other, are equally compelling and mutually inclusive than exclusive. Cameroon has the Vision of ensuring a resilient economy and equally health of citizen during and also after the pandemic. Like other tax policies, business tax deduction reforms should be evaluated by whether they promote efficiency, simplicity, and fairness we hold high the view that tax laws passed in Cameroon should be evaluated on a timely basis to ensure that, the tax deduction measures produce social change, ambitious and progressive growth challenges without creating excruciating pains. The desired outcome must not be hampered by with high tax rates comparatively.

ENDNOTES

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^{vii} Ibid

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- ^{xxii} Lord Greene Mr. in *IRC V. British Salmond Aero Enginers LTD* (1938) K.BB
- ^{xxiii} Lord Cave in *British insulated & Halaby cables ltd. v. Atherton* (1926) 10 TC
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- ^{xxv} *R.I.C. v. Carron co.* (1968) 45 TC
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- ^{xxx} *Ibid* 7 and 8
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- ^{xxxii} See also Section 13. Of the Tax Code
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- ^{xxxiv} This refers to Finance Law
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