

## Article III of Law 30 of 2023

### Between a rock and a hard place

#### Introduction

The state issued Law 30 of 2023 in order to address some topics in the current tax legislation, and this law included Article III for the purpose of addressing the problems of examining files whose turnover does not exceed ten million pounds, as a measure within a set of procedures aimed at automating the Tax Authority within the framework of digitizing the state, and the Ministry of Finance and its successor the Tax Authority have done well in this matter, as the aim is to solve the problems of those files for that past period (Which are often characterized by estimated files or close to estimation and are based on simplified notebooks).

The question raised by some experts is whether this article will actually eliminate these problems once and for all, or will it open a new door for disputes resulting from the hammer of Article 90 of Law No. 91 of 2005.

(We will return to it at the end of the article) and the anvil of Law 67 of 2016 in addition to the penalties of Law 206 of 2020, and we will address in the next lines the topic in general and then preference.

This third article seeks to end disputes of tax files for commercial activity up to 10 million pounds, which are often charged in appreciation.

#### How is the file accounted for in the missions in terms of appreciation in practice??

When reviewing the examination note, which is translated into Form 19 Taxes, we will find the form issued as follows (e.g. for a process case):

- Net profit of services received by acknowledgment.
- Net profit of supplies contained in the declaration.
- Inverted net profit from the source of the declaration.
- Net profit of services included in a discount statement and addition.
- Net profit of supplies received as a discount statement and addition.
- Net profit of M90 services.
- Net profit of supplies m 90.

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Through negotiations and tug-of-war with the missions about the application of Article III, these items will be reduced and some of them will be excluded in the event that the financier proves the inaccuracy of these estimates, and the matter will end up with a project to account for the estimate of the turnover to which Article III will be applied, resulting in a measure of tax acceptable to the financier, regardless of its accuracy, correctness, proximity and distance from reality, but the matter is based on an amount of tax acceptable to the financier, Here ends the role of the third article with the observation of the survival of Article 110, Article 87 is valid for application and here we move and go to the other side of the examination, which is the dark thing in this regard, which is the side of the anvil which is the examination of the added value, which shows us from its examination that we are in front of a turnover that has been accounted for under Article III and another turnover less than it contained in the value-added declarations, which will not waive the interest of accounting for it and the application of fines and tax articles In addition to these differences, it is known that these differences are considered a case of evasion that requires the application of evasion and criminalization articles to them.

### **The bottom line**

Through the previous brief presentation, we find that the third article will end the dispute door on the commercial side, while it will open doors of disputes on the other hand, and the application of the sanctions articles on the taxpayer under the Value Added Law and the Unified Tax Procedures Law No. 206 of 2020.

This requires procedural intervention from the interest or legislative from the House of Representatives to solve that problem until the desired third article achieves and we reach the desired goal so that the financier / taxpayer does not lose confidence in the laws or decisions issued to end disputes with the state and the tax authority, where what he will find a solution on one side will be a problem or problems on the other.

### **Proposed solution**

1. Issuing legislation that addresses this problem, and proposed subjecting the differences resulting from the application of the third article to a lump sum value-added tax, let it be 1% of the differences, with the non-implementation of the criminalization articles and penalties for these differences, as well as the suspension of the additional tax article.
2. Or issuing a periodic letter or executive instructions that the files that have been accounted for in accordance with Article III through the turnover are not considered an argument for the value-added

pot and the articles of criminalization and evasion contained in the related laws are not applied to them.

## Article 90 of Law 91 of 2005

### What is the problem with Article 90 in the application??

When preparing Law 91 of 2005, the legislator was prudent in the technical construction of Article 90, which allows the Tax Authority to estimate

(In order to preserve the rights of the public treasury) for fear of being judged unconstitutional and this is what actually happened in 2005 when the constitutional ruling No. 125 of 18 judicial [Supreme Constitutional Court] issued on Sunday, December 11, 2005 unconstitutionality of the second paragraph of Article 38 of the Income Tax Law promulgated by Law 157 of 1981 and amended by Law 187 of 1993, the legislator has set controls for assessment included in Article 90 and also specified the cases in which the interest is entitled to estimate as well as the limits of this Estimation and how it is:

1. Based on any data contained in the declarations supporting it.
2. Based on any available data in the event of failure to submit the declaration or failure to submit the data and documents supporting it.
3. Non-conformity of the declaration with the documents proved by the Authority.

This is what came in the content of the article, but what is happening in reality is contrary to that and is not based on evidence or data, and therefore we do not find rationale in the profit estimate note for the application of this article, but we will find preceded by the word (... and therefore we see the application of the article as follows ..) Accordingly, we request the issuance of executive instructions with the controls for the application of that article to return the course of the article to the goal set by the legislator for it, which is to preserve the rights of the public treasury according to the fait accompli and not according to arbitrary estimates.

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