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Senegal Enacts a New 5% Special Contribution from Mining Companies and Cement Producers

The Senegalese Government adopted law n°2011-20 dated 13 December 2011 providing the 2012 Senegalese Finance Act, subsequently published in the official gazette on 6 January 2012 (the “Finance Act”). The Finance Act creates, for the benefit of the Senegalese State budget, a new 5% special contribution on mineral products and cement (Contribution spéciale sur les produits des mines et carrières – CSMC) (the “5% Contribution”).

The “5% Contribution” on Mineral Products and Cement – Guidelines

The 5% Contribution is listed as a fiscal revenue under the Finance Act. Pursuant to Article 19 of the Finance Act, the calculation basis for the 5% Contribution depends on the type of operation carried out by the holder of the mining title or by the cement producer:

- for sales: the selling price inclusive of all fees and taxes (except VAT and the 5% Contribution itself);
- for imports: the customs value plus all duties charged by the customs department (except VAT and the 5% Contribution itself); and
- in all other cases: the normal price or nominal value of the good inclusive of all fees and taxes (except VAT and the 5% Contribution itself).

The provisions relating to assessment, collection and disputes for the 5% Contribution are the same as for VAT.

What’s Next?

Mining companies and cement producers conducting business in Senegal have started receiving contribution requests from the Tax Department of the Ministry of Economy and Finance calculated as from 1 February 2012.

It will be interesting to find out the robustness of fiscal stabilisation clauses granted to existing mining companies and cement producers in respect of the 5% Contribution. Although representatives from the Senegalese Government claim that this is not a tax, notably by using the term “contribution”, courts in other jurisdictions where a similar argument was presented have ruled that it was actually a tax.

We are closely monitoring developments with regard to the 5% Contribution, and would be happy to discuss these developments with you.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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