



Importance of an Adequate Activity's Codification for the Companies' Activities Identification in Algeria—Toll Manufacturing Case as an Example

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Abstract

Different stakeholders of a company use the bylaws and the trade register to identify its activities, the absence of a code dedicated to one or several activities may reduce their visibility and impact their potential decisions. This topic takes a significant importance in Algeria where different activities are subject to different treatments from tax and forex sides. The absence of the right activity code on the company trade register may create several complications for the company and its stakeholders, as the tax authorities may consider that a company is carrying out only production activity, and grant the favorable tax regime applicable to production activity to its global turnover, while it is providing in addition to its production activity services to its clients (service activity does not benefit from this favorable tax regime); this lack of visibility of the company's activities impacts in addition to the tax authorities, the decisions of commercial banks and potential investors. The toll manufacturing is a service activity that production companies having assets (machines and plants) provide to their clients generally under a subcontract agreement is taken as an example in this article (notably as the Algerian trade register nomenclature does not provide a dedicated code to this activity) to illustrate this problematic and highlight the necessity to consider it in Algeria.

Keywords

Algeria, activity code, tax, banks, forex, toll manufacturing, trade register, bylaws

1. Introduction

The economic sphere is a very complex system where companies and individuals interact, contract and deal with transactions including the production and sale of goods, provision of services and works.

This complexity is increased by the different legislations and rules applicable to the economic actors notably from tax and forex sides, Algeria for example in its policy to promote industrial activities and reduce importations provides different tax and forex treatments to the companies depending on their activities, production activity benefits from more advantages and flexible treatments than services; while importation and retail activities are subject to several restrictions.

This situation makes the clear identification of the companies' activities in Algeria a crucial point on which the companies and their stakeholders should focus notably in case of a production company that may provide services to its clients.

The toll manufacturing activity is one of the main cases where a production company is considered as a service provider, in such case adequate qualification from the trade authorities, more flexibility at the level of the company

and more attention from the tax authorities and banks are required.

This article will highlight the necessity to identify the right activities of the companies and illustrate the impact that a non-identified service activity should generate on a production company's and its stakeholders in Algeria.

The toll manufacturing services are provided as an example and a concrete case in Algeria.

2. Why it is important to have clear visibility on the company activities in Algeria?

The production and service activities are treated differently by the Algerian tax and forex legislations, a clear indemnification of the companies' activities is important for the companies and the public authorities.

2.1. Algerian tax regime

The production's turnover and incomes are subject to a tax treatment more favorable than the service's case:

Table 1. Tax rates applicable to the production and service activities

Activities	Applicable taxes		
	VAT	TAP	CIT
Production	19%	0%	19%
Service	19%	1,5%	26%

It is important to note that the circular of the tax authorities related to the modalities of the application of the CIT rates in case of (tax, 2016), a company carrying out several activities indicates that *"in the case of the exercise of several activities by a single legal person, the aforementioned IBS rates apply to the profits derived from each activity; as such, reference should be made to the various activity codes attributed to the legal person in its trade register, to assess the exercise of several activities"*.

2.2. Algerian forex treatment:

The Algerian forex legislation notably via the rule 07-01 of the bank of Algeria and its article 3 indicates that the payments and transfers related to the international routine transactions are free, and could be operated via an authorized intermediary (local bank);

Article 4 of the same rule provides that are considered as international routine transactions notably:

- Payments and transfers made in respect of foreign trade operations on goods, services, in particular technical assistance and the routine operations linked to production;
- Payments made as interest on loans and incomes from other investments;
- Loan repayments.

Instruction n° 02-07 dated 31st May 2007 related to the routine transactions with foreign provides a list of these transactions for which the payment and its transfer are free and not subject to the approval of the bank of Algeria;

The provided list does not include the possibility of transfer royalties for the trade name and brand, but it provides that only production companies are allowed to pay and transfer aboard the royalties related to the industrial property rights (patent and licences for production), service companies could not pay such royalty for their foreign partners.

In the frame of their works, the tax authorities and banks should have a clear view on the company activities to be able to assess or audit it.

Taking into consideration the mentioned differences of treatment provided by the Algerian legislations for the production and service activities, a clear identification of all company activities is required and should be easily identified by the company management and its stakeholders notably the relevant authorities to grant to clear and rigorous treatment from all parties.

3. How we can grant a clear visibility on the company activity?

From a legal point of view a company is an organization which carries out an economic activity that consists in offering goods or services on a given market (vignal, 2020, p. 78). The nature of its economic activities and its legal qualification are essential in its life and in the determination of its legal obligations (André décoq, 2018, p. 45).

From administrative standpoint, and according to Algerian trade code (ord, 1975), the activity of a company is limited to its objects of incorporation reported in its bylaws and trade register; (Nouredine, 2018, p. 161) and the law 04-08 via its article 23 stipules that *“the registration of activities is carried out by reference to the nomenclature of economic activities subject to registration in the commercial register”* (04-08, 2004)

The objects of incorporation are based on the Algerian trade register center nomenclature available on its website (Sidjilcom, 2022).

It is important to highlight that without the registration its registration at the level of the national trade register center, the company has no legal existence except in the exceptional cases provided for by law, this formalism is justified to protect partners and future partners and third parties and the interest general (Marle, 2004, p. 75).

The executive decree n° 15-249 fixing the content, as well as the conditions of management and updating of the nomenclature of economic activities subject to registration in the trade register via its article 2 indicates that *“The nomenclature of economic activities NEA group economic activities, structured by sectors of activity, subdivided into groups and sub-groups of homogeneous activities and fixing for each activity a specific coding and wording.*

Codification returns content that constitutes a general description of the activity and may, if necessary, include an accessory description.

The codes and wordings of the NEA relating to the sectors of activity, include the commercial operations carried out by the economic operators as a complement to their main activities.

It is understood by commercial operations as complementary, the services of transport and delivery to customers, the assembly and installation of equipment and the supply of spare parts as well as services related to advice and training”.

Article 3 provides that the nomenclature of economic activities includes the following sectors:

- Production of goods;
- Artisanal production company;
- Wholesale distribution;
- Importation for resale in state;
- Retail company;
- Services;
- Exportation.

As a production company the activity code to be included in the company bylaws must correspond to the production of goods group; however, in case the same company provides services to its clients, a code dedicated to the service rendered should appear on the trade register.

4. Toll manufacturing case in Algeria as an example

4.1. Why the toll manufacturing activity should be qualified as a service?

Definition of commodities and services under the Algerian legislation

The Algerian legislations include different articles dedicated to the definition of the production of commodities and the provision of services;

For example, Order 08-03 defines through its article 2 the commodities as any raw or factory natural, agricultural, traditional or industrial products, raw or factory;

The same article defines the services as any assistance having an economic value.

Law 03-09 dated February 25th, 2009 related to the consumer protection and fraud suppression also defines the service and the commodity in its article 3; Under this law a commodity is a material thing that can be transferred for a fee or for free;

The service is defined by this law as every act provided, other than the delivery of commodity, even if this delivery is contingent or supported by the provided service.

The Algerian legislator considers that a commodity definition is directly linked to a material thing; while the service is defined as a nonmaterial thing having an economic value.

Definition of subcontracting agreement under the Algerian legislation:

Article 549 of the Algerian civil law defines the subcontracting act as a contract whereby a one party undertakes to grant something or perform work in return of a remuneration granted by the other contracting party;

Article 550 of the same code indicates that it is possible that the contractor’s scope be limited to providing his

work according to while the employer provides the raw material;

Under this case provided by article 550 mentioned above, the employer could subcontract the production process and remains the owner of raw materials, ongoing production and finished goods; The scope of the subcontracting party is limited to the provision of services.

Qualification of the toll manufacturing model:

Considering the definition of the commodities and services detailed in the point 1.1 above and article 550 of the Algerian civil code, the toll manufacturing activity should be considered as a service and not a production activity as it does not include a transfer of a physical thing and it is limited to the work performed.

The toll manufacturing model could be used in several sectors as it is a kind of a subcontracting agreement under which one party provides work to help the other contracting party to produce a finished product.

For example, one of the main sectors in Algeria is pharmaceutical industry, in this sector the toll manufacturing model use is clearly provided by the local legislation;

Indeed, article 8 of the executive decree 21-82 related to the pharmaceutical establishments and the conditions for their agreements stipulates clearly that a pharmaceutical production establishment could subcontract a part of the production process to another pharmaceutical production establishment.

Why Algeria should introduce a code of activity dedicated to the toll manufacturing activity?

In this frame, it is important to note that the current nomenclature available on the trade register center does not include a code dedicated to the tolling services;

Consequently, the bylaws and trade registers of production companies carrying out toll manufacturing services in addition to their production activities do not provide this information which may complicate the work of its stakeholders notably from a tax standpoint as the company may apply the tax treatment applicable to the production activity to its toll manufacturing activity;

In addition, the tax authorities notably in the frame of an audit may not identify the toll manufacturing activity and may not isolate the related revenue which may impact the tax collected as the different tax rates applicable to the services are higher than the ones applicable to the production activity (please refer to the table 1 above);

The banks and the bank of Algeria also may be impact by this lack of visibility on the service activities of a production company as they may grant the favorable treatment provided to production activities to a toll manufacturing company which is supposed to be considered as a service company.

Consequently, we recommend strongly that the Algerian trade register nomenclature includes a code dedicated to the toll manufacturing activity at least for the main sectors using this model such as the pharmaceutical and construction sectors.

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