DGI circular No. 735: the tax "right to make mistakes" explained

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On 9 February 2024, the Directorate General of Taxes (DGI) published circular No. 735 (note circulaire), which comments on the tax measures in the Finance Act (Loi de Finances) 2024. It covers the VAT reform, voluntary disclosure and the review of individuals' tax position in detail. One lower-profile measure deserves attention: the **right to make mistakes**, set out in article 221 bis of the General Tax Code (CGI).

The principle

A business can make an honest mistake in its return: an expense in the wrong category, income left out, an incorrect rate. Until now, such mistakes usually came to light in a tax audit, with surcharges and penalties as a result.

The new scheme reverses this logic. The taxpayer can:

1. **ask the tax authorities** to send it the statement of irregularities they have found in its returns;
2. **file an amended return**;
3. **pay the additional tax voluntarily**.

By following these steps, it avoids the surcharge and penalty provided for in articles 184 and 208 of the CGI.

The conditions

The deadline. The amended return must be filed within **60 days** of receiving the statement of irregularities. After that, the usual penalties apply.

The explanatory note. The amended return must come with a note, using the tax authorities' template, prepared:

- by a person authorised to act as **statutory auditor**, if turnover for the last financial year closed reaches MAD 50 million excluding VAT;
- by a **chartered accountant (expert-comptable) or approved accountant (comptable agréé) other than the one who keeps the accounts**, below that threshold.

The note sets out the irregularities found, the corrections made item by item and, where relevant, the detailed reasons why certain points have not been corrected.

Exclusions. The scheme does not apply to returns that are already subject to a tax reassessment procedure (articles 220 and 221 of the CGI).

What the scheme does not wipe out

- **Late-payment surcharges** (5%, then 0.50% per month) are still due, because the tax is paid later than it should have been.
- **A tax audit is still possible**: filing an amended return does not rule out a later audit.

In short, the right to make mistakes spares you the penalties for an inaccurate return, but not the cost of paying late.

An example

At its own request, a company receives a statement showing a difference between the turnover declared for VAT and the turnover in its corporate tax return. Its chartered accountant, who does not keep its accounts, analyses the gap. Part of it relates to credit notes recorded incorrectly, and can be justified. The rest relates to income left out, and is corrected.

Within 60 days, the company files its amended return with the explanatory note and pays the tax plus late-payment surcharges only. It avoids the surcharge for an inaccurate return and goes into any future audit with a documented file.

Why the note's author must be independent

The law excludes the accountant who keeps the books, because the note must bring a fresh pair of eyes to the discrepancies. For an SME, this means bringing in a second professional, or the statutory auditor for businesses above the threshold. That outside view is what gives the process its value: it separates a clerical error from a debatable tax position.

Other procedural measures in circular No. 735

The circular also covers:

- the **abolition of the advisory committee on abuse-of-law appeals**, whose cases now go to the National Tax Appeals Commission (Commission nationale du recours fiscal);
- the **overhaul of the procedure for reviewing the overall tax position** of individuals;
- the **extension to the end of 2024** of the flat-rate regularisation for inactive companies.

Our advice

The right to make mistakes is a useful step before a major transaction (a sale, a fundraising or a succession), or when a new finance team uncovers shaky practices. But it must be prepared properly, so that the amended return stands up to an audit.

Our tax & legal and audit teams can prepare the explanatory note and guide you through the procedure. To discuss your situation, contact us.

Sources

- Direction générale des impôts, note circulaire n° 735 relative aux mesures fiscales de la loi de finances n° 55-23 pour l'année budgétaire 2024 (in French), publiée le 9 février 2024, « Mesures communes », point 3 (tax.gov.ma).
- Code général des impôts, articles 184, 208 et 221 bis (in French) (tax.gov.ma).

A question on this topic?

The Adyel & Associés teams in Casablanca support businesses and their directors with all their tax, accounting and payroll obligations. Let's talk about your situation.

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