

## The Egyptian Tax Authority Issues Executive Instructions for Implementing Income Tax Law Amendments regarding Non-Final Taxes

*By Omar Sherif and Zaina Morad*

### Introduction

In the legislative framework of incentivizing small and medium enterprises (“**SMEs**”), law No. 152 for 2020 developing SMEs (the “**SMEs Law**”) set forth specific tax rates based on percentages and based on flat lump sums to be paid by SMEs based on the amount of their annual turnover (the “**SMEs Tax Treatment**”).

On the 15<sup>th</sup> of June 2023, the House of Representatives issued Law No. 30 of 2023 (the “**Law**”), effective as of the 16<sup>th</sup> of June 2023, amending certain aspects of the Income Tax Law No. 91 of 2005. Article 3 (the “**Article**”) of the Law deals with the final tax assessments for taxes due by SMEs.

On the 7<sup>th</sup> of November 2023, the Egyptian Tax Authority (the “**ETA**”) issued Executive Instructions No. 95 of 2023 (the “**Instructions**”) clarifying the mechanisms for implementing the rules introduced by the Article. We highlight the main features of the Instructions as follows:

### Scope of Application

The Article stipulates that all non-final taxes due as of the effective date of the Law shall (i) be applicable on SMEs whose annual turnover does not exceed 10 million pounds (in accordance the SMEs Law), and (ii) not be less than the value of the taxes stated in the SMEs tax returns.

Further, the Article states that SMEs shall have the right to opt out of the application of SMEs Tax Treatment.

### Key Highlights of the Instructions

- The Instructions are applicable to non-final taxes due up to June 16<sup>th</sup> 2023.
- The ETA clarified the definition of non-final taxes as taxes which have not exhausted their means of appeal, whether pending or awaiting to be heard before the tax office, or at any of the various stages of dispute or audit.
- The Instructions set forth the criteria upon which the annual turnover for SMEs is calculated. In addition, the Instructions clarify the tax dues based on each bracket of SMEs turnover. The Instructions establish tax brackets based on varying ranges of SMEs’ annual turnovers. For companies with an annual turnover not exceeding 1 million Egyptian Pounds, the Instructions set out definitive due tax amounts in Egyptian Pounds. As for companies with an annual turnover exceeding 1 million pounds, the due taxes are calculated proportionally as percentages of the annual turnover.
- The ETA obligates the relevant authorities to implement the Article automatically, and without requiring taxpayers to submit a request to benefit from the Articles’ application. The taxpayer may, however, opt out of such application by submitting a written request for this purpose to the ETA.
- For natural persons, the ETA excludes employment income (i.e., salaries) from the assessment of due tax amounts.
- Tax payers shall be liable to pay the tax dues disclosed in their annual tax returns even if the calculation of their annual turnover by the ETA resulted in less tax dues.
- With regards to in-progress tax evasion cases pertaining to companies whose annual turnover (known and hidden) does not exceed 10 million pounds, the ETA obligates the Anti-Tax Evasion Committee to apply the tax rates set out in the Instructions.
- The Instructions shall be implemented without prejudice to articles 46 bis, 46 bis3, 56 bis, 87 bis, and 110 of the Income Tax Law No. 91 of 2005.



## Market Reaction

The Article and its Instructions are consistent with the government's statements and efforts to settle all pending tax disputes before the end of the current fiscal year. However, when the Law was first issued in June, significant controversy surrounded the ambiguity of its practical application. In this light, the Instructions are expected to be met positively by those to which the Law applies and the relevant tax authorities alike, seeing as they provide significant clarity on the matter.





## Investment Funds' Remote Attendance and Voting for Investors

*By Omar Sherif and Malak Mounir*

The Financial Regulatory Authority (the “**FRA**”) has taken a very positive step towards the digitalization of investor’s meetings pertaining to Investment Funds. This very welcome process simplification is expected to expedite meetings’ processes, allow increased participation while maintaining data protection, confidentiality and protections to investors.

To this end, the FRA issued Decree No. 225 of the year 2023 (the “**Decree**”) published in the official gazette and on the websites of the FRA and the Egyptian Stock Exchange on November 29<sup>th</sup>, 2023. The Decree regulates the controls and restrictions pertaining to allowing the use of electronic means to remotely attend investor meetings of investment funds and vote on their resolutions. The Decree entered into force on the day following the day of its publication.

The Decree sets forth the procedural requirements to be adhered to in order for the investors’ meetings (the “**Meetings**”) and the resolutions passed therein to be valid; in addition to the protections afforded to the investors. We will outline the main provisions of the Decree:

### Procedural requirements

- The Meetings’ invitations must include the dial in details for the electronic system used for attending, voting and providing clarifications.
- Documents to be discussed during the Meetings must be made available electronically for the investors’ review.
- The certificates of the investors in attendance must be frozen before the Meetings, as legally required.

### Protection requirements

- The electronic system must provide the required protections to guarantee the logging in of the investors into the Meeting, the ability to identify them against the list of investors and affording confidentiality with regard to voting on resolutions.
- The electronic system must allow for the verification of the identity of each attendee.
- Investors must be able to submit their clarifications before and during the Meetings and the fund must be able to respond to such clarifications.
- Investors should be allowed to change their vote during the Meetings.
- The Meetings must be recorded, and such recordings shall be considered as conclusive evidence of the Meetings.

### Market Reaction

Dr. Mohammed Farid, President of the FRA has indicated that the Authority aims to develop and make available the use of electronic systems to enhance the protection of investors’ rights and enable them to exercise their rights by allowing attendance at meetings of the group of holders of investment funds documents, as well as presenting and discussing topics and voting on remote decisions.

Moreover, Dr. Farid emphasized that the Decree presents a step towards achieving financial and investment inclusion, which aids in the development of investment policies in the pursuit of financial growth.

## VAT Payments in Hard Currency

*By Omar Sherif and Mohamed Nour*

As part of the developing the Egyptian taxation system and the efficiency of the tax collection process, amendments to the Unified Tax Procedures Law executive regulations No. 286 for 2021 (the “**Executive Regulations**”) have been enacted by the Minister of Finance. The amendments aim to ease the VAT collection process and to increase the collection of hard currency.

The Ministry of Finance Decree No. 518 for 2023 (the “**Decree**”) was published in the Official Gazette on 21 November 2023, and entered into force the following day. The Decree amends Article 52 bis of the Executive Regulations of the Unified Tax Procedures Law No. 206 for 2020.

We shall delve into the key highlights of the Decree as follows:

### Key highlights

The Decree introduced a new regulation that imposes an obligation on taxpayers who offer goods and services and receive payments in hard currency to pay the applicable Value Added Tax (VAT) obligations in the same currency. This payment should be made after deducting the relevant input VAT, which could also be in hard currency.

Under the new Decree, taxpayers are also allowed to pay the corresponding VAT in Egyptian pounds if they can provide evidence that an amount in a hard currency, equivalent to or greater than the VAT amount owed, was waived to an Egyptian bank within the month following the revenue realization.

### Market Reaction

The Decree was welcomed by the market as it was perceived as a positive step to strengthen the VAT collection system in Egypt.

On the other hand, Dr. Mohamed Maait, the Minister of Finance in Egypt, emphasized the government’s commitment to collecting public treasury dues in a way that ensures tax fairness. VAT is collected in foreign currency for authorized entities, and VAT on production inputs or purchases will also be deducted in the same foreign currency before paying the due tax. This approach reflects the government’s efforts to ensure a balanced and equitable tax system.

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## New Law Establishes “The Egyptian Export and Investment Guarantee Agency”

*By Mariam Fahmy and Zaina Morad*

### Introduction

On the 9<sup>th</sup> of November 2023, Law No. 178 of 2023 was issued (the “**Law**”), establishing the Egyptian Export and Investment Guarantee Agency (the “**Agency**”), as an Egyptian joint stock company and outlining its operational mandate. The Law came into effect the following day, on the 10<sup>th</sup> of November 2023.

According to the Law, the main purpose of the Agency is to provide credit guarantees and technical services in order to facilitate, diversify, and enforce Egyptian exports and investments abroad, and to boost Egypt’s involvement in the global supply chain.

Hence, we delve into the key highlights of the Law, as follows:

### Legislative & Procedural Features

- The Agency replaces the Export Credit Guarantee Company of Egypt (the “**EGE**” or the “**Predecessor**”).
- The Central Bank of Egypt (the “**CBE**”) shall undertake all acquisition procedures in order to obtain the entirety of the Predecessor’s shares at a determined value agreed upon by the parties involved, within three months from the date of the Law’s enactment.
- The EGE’s board of directors shall remain competent and in its current form until the acquisition procedures are finalized and a new board of directors is appointed for the Agency.
- The term “Egyptian Export and Investment Guarantee Agency” shall replace the term “Export Credit Guarantee Company of Egypt” wherever used in any laws or decrees.
- The Law abolishes Law No. 21 of 1992, which had previously established the EGE.

### EEGIA Mandate Highlights

- The Agency acts as a provider of credit guarantees and technical services, such as (i) concluding various types of financial contracts; (ii) cooperating with local and international banks and financial institutions to provide integrated financial services to finance Egyptian exports and investments abroad; and (iii) providing financial and economic advisory services in the field of exports.
- The Agency’s main purpose is to:
  - Encourage, develop, and diversify Egyptian exports and investments abroad.
  - Increase the Egyptian exporter base’s competitive advantages and solidify its place on the global exporters map.
  - Expand the Egyptian’s exporters’ base, boost its involvement in the global supply chain, and allow for entry into new markets.

### Miscellaneous

- The Agency is a joint stock company, with its headquarters located in Cairo and it is permitted to establish branches abroad and locally.
- The term of the Agency is 50 years from the date of the Law’s enactment.
- The Agency’s authorized capital is USD 600 Million, and its issued capital is USD 50 Million, distributed equally over 500,000 shares (each with a value of USD 100).
- The Agency is wholly owned by the CBE, and it shall guarantee all of the Agency’s financial obligations.

### Market Reaction

The establishment of the Agency aligns with the government’s economic policy and, ultimately, its efforts to encourage Egyptian exports and investments abroad. Mr. Mohamed El Sallab, Chairman of the Industry Committee in the House of Representatives, affirmed that he expects this Law to have a positive impact on Egypt’s economy, considering the



current scarcity of foreign currency. He also expressed that the establishment of the Agency should encourage local production, which is expected to further boost the state's economy.





## Amending the requirements of companies operating in direct investment under Capital Market Law

*By: Sherry El Shalakany and Mohamed Nour*

Following the Minister of Investment and International Cooperation Decree No. 113 for 2018 regarding adding the activity of direct investment companies to the activities of companies operating in the field of securities in the Capital Market Law No. 95 for 1992 and setting their requirements and conditions (the “Decree”), the Prime Minister has recently issued a new Decree No. 4580 on 28 November 2023 (the “Amendment”) amending four items of these requirements. The Amendment amended the requirements of Art. 1 of the Decree with respect to Capital, shareholders, object and management of these companies.

We highlight below the key points of the Amendment.

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### Capital

The issued and paid-up capital of the company shall not be less than EGP 10 million, and the share of the general partner in charge in the management of a limited partnership by shares shall not be less than half percent of the share of the partners contributing to the capital. Further, the share of the managing shareholder in joint stock companies shall not be less than half percent of the company's issued capital. The company may determine the authorized capital and the issuance and increase of the issued capital shall be through successive decisions considering the volume of investments carried out by the company.

### Shareholders

The company's capital (except for the joint partner's share or the share of the managing shareholder in joint stock companies) will be offered privately to the qualified investors, including individuals, legal persons, and banking and non-banking financial institutions.

### The company's object.

Practicing direct investment by investing the company's funds in securities listed or not listed in the Egyptian stock exchanges or shares in limited partnership companies. The company's object may include practicing the risk capital activity.

### Management of the company and its investments

The company is managed by the general partner in limited partnerships, or the managing director in joint stock companies, and in particular, the company's investments are managed based on a management contract signed between the company and the managing shareholder, provided that this contract includes the authorities prescribed for the general partner in charge of management or the managing director. As the case may be, the authorities of the company's board of directors and the method of making investment decisions. The aforementioned contract may not be concluded except after the approval of the company's general shareholder meeting and the exclusion of the managing joint partner or the managing shareholder, as the case may be, from voting on this decision.

### Market Reaction

The Amendment is targeted to increase the investments in the field of securities and to facilitating Egypt's economy reach global competitiveness, achieving financial improvements, investor confidence in the Egyptian market, ensuring fair competition practices and attract new investments by adding new financial tools.