



## Tax News

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## Special Tax News

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**I. Additions and amendments to the Law no. 9920, dated 19.05.2008 “On Tax Procedures”**

The Parliament of the Republic of Albania has approved on 03.11.2016, law no. 112/2016, published in the Official Gazette no. 219, dated 15.11.2016 and entering into force on 30.11.2016.

This law has brought significant changes to the law no. 9920, dated 19.05.2008 “On Tax Procedures” as amended (following referred as “the/this Law”), aiming to simplify and facilitate tax procedures in order to improve the business climate and the tax administration. It follows the decision of the Constitutional Court no. 33, dated 08.06.2016, which partially abrogated the amendments to this Law under the anti-informality measures (for further information please refer to our [Tax News of February 2016](#) and [Tax News of June 2016](#)).

We have presented below a summary of the main changes, classified according to their type/intention.

### **Increase of transparency with taxpayers and improvement of the process for their information**

- **Technical decisions, court decisions and commentaries**

Technical decisions issued by the General Tax Directorate upon requests for interpretation of taxpayers, will be published within 5 calendar days from the date they are issued in the official webpage

of the General Tax Directorate, under the Technical Decisions rubric (by keeping confidentiality of the taxpayers' data).  
*Previously, it was not specified where such decisions would be publicly available.*

The General Tax Directorate will prepare in July and December and publish in its official website, respectively in August and January, commentaries on the technical decisions issued for the treatment of specific cases, classified by nature.

The General Tax Directorate will also continue to publish in its official website binding decisions regarding tax matters of the Administrative Court of Appeal, the Supreme Court and the Constitutional Court. However, from now on, they will be included in bulletins issued every 6-months.

- **Interest for late payment**

The General Tax Directorate will publish in its official website the interest rate applied to calculate the late interest payment for unsettled tax liabilities by taxpayers and/or undisbursed tax reimbursements by tax authorities.

### **Facilitation of procedures to obtain information and comply with tax obligations**

- **Communication by tax authorities**

The tax administration will communicate to taxpayers tax assessment notices, requests for payment, decisions and other official documents both, through electronic means (by e-mail) and through mail service (by courier).

*Previously, the tax administration was entitled to choose one of the methods. In practice, many taxpayers to date have been deprived from the right to appeal tax assessment notices sent only electronically and not bearing the necessary signatures.*

- **Calculation of deadlines**

It has been clarified that the day of issuance of an act by the tax administration or the day of its receipt by the taxpayer will not count (will be considered as day zero, not day one) for the calculation of deadlines for subsequent and related actions by the tax administration or the taxpayer (e.g. for submission of an administrative appeal, for initiation of forced collection procedures, etc.).

- **Administrative complaints**

It has been now specified that taxpayers are entitled to submit administrative complaints at the Regional Tax Directorate or General Tax Directorate for actions

and omissions of tax inspectors/specialists that infringe taxpayers' rights.

- **Unregistered persons conducting commercial activity**

When the tax administration will identify persons conducting commercial activity but unregistered with the National Business Center (NBC), it will proceed by seizing the goods and obligating the persons to register immediately with the NBC as VAT-payers. The administrative penalties will be calculated and applied immediately upon registration.

*Previously, instead of obliging the persons to register with the NBC, the tax administration would forcedly close their activity.*

- **Tax passive status**

Taxpayers in tax passive status are no longer obliged to submit tax returns (with zero liability) during their permanence in the passive registry.

- **Bankruptcy procedures**

Tax authorities will file for initiation of bankruptcy procedures on a taxpayer according to the provisions of the specific law on bankruptcy.

*Previously, tax authorities would file such request at the court if the taxpayer:*

- *Had resulted with negative net equity for 3 consecutive years,*
- *Had unpaid tax liabilities for at least 2 years,*
- *Had been in tax passive status for at least 3 years.*

- **Deregistration procedures**

A few changes have been introduced regarding the procedures of deregistration of taxpayers, amongst which:

- The Regional Tax Directorate will verify the tax situation of the concerned taxpayers and notify simultaneously the NBC/court and the taxpayer within 10 working days from the date of submission of the request for deregistration by the taxpayer to the NBC/court.
- If the Regional Tax Directorate will decide to conduct a tax audit at the taxpayer, the above deadline is extended up to 30 working days, including the performance of the tax audit.  
*Previously this deadline was 30 calendar days.*
- The Regional Tax Directorate will have the right to challenge the deregistration of the taxpayer in case the latter has not paid tax liabilities, has not submitted closing financial statements or has failed to submit tax returns.  
*Previously the tax administration could oppose to the deregistration only for the first two reasons.*
- The obligation of taxpayers to submit tax returns terminates (a) for entrepreneurs/physical

persons, at the moment of application for deregistration, (b) for other taxpayers, at the moment of submission of the final report on liquidation/merger/demerger.

- **Computerized fiscal invoices**

All taxpayers, regardless of the number of sales transactions performed, will be entitled to request and obtain approval from the General Tax Director to use computerized fiscal invoices printed by its own IT system with unique and unrepeatable serial number, instead of the pre-printed and hand-written fiscal invoices currently used by the majority of taxpayers. The relevant procedure will be determined by an instruction of the Minister of Finance.

*Previously this option was available only for taxpayers performing a significant number of sales transactions.*

- **Cash and non-cash payments**

Taxpayers receiving payments through electronic money (e-money) financial institutions licensed by the Bank of Albania will not have the obligation to install electronic cash registers and issue fiscal coupons i.e. e-money payments will be considered as non-cash payments.

*Previously non-cash payments for this purpose were considered only those performed through banks.*

Furthermore, it has been specified that, in addition to payments performed through banks, payments performed through bank credit cards as well as payments through e-money institutions, will not count towards the upper limit of ALL 150,000 set for cash payments between taxpayers.

- **Agreement for payment of tax liabilities by instalments**

A taxpayer will be able to enter into an agreement for payment of tax liabilities by instalments with the respective Regional Tax Directorate, provided that:

- The taxpayer is able to verify the current financial inability to pay as well as the future ability to comply with the agreement;
- The taxpayer pays immediately 20% of the tax liability subject to the agreement;
- The tax liabilities concerned are the result of a tax assessment notice or of a self-assessment by the taxpayer, in which case, they should not be tax liabilities subject to retaining/withholding by the taxpayer (e.g. withholding tax, social and health insurance contributions);
- Tax authorities have not initiated any auction for the sale of seized properties of the taxpayer, in the context of forced collection measures undertaken for such tax liabilities.

If tax authorities have initiated forced collection procedures over the tax liabilities concerned, the

taxpayer can still enter into such agreement and in this case:

- Tax authorities shall withdraw any order for seizure of bank accounts;
- Shall not withdraw any securing charge or mortgage created on the assets of the taxpayer.

Provided that the taxpayer fulfils the agreement, the tax liabilities concerned will be subject only to interest for late payment and not to penalties for late payment.

- **'Tax certification' of tax declarations**

The 'tax certification' concept introduced with the amendments to the Law last year (please refer to our [Tax News of October 2015](#)) has been reshaped.

Taxpayers will have the possibility:

- To engage not only certain authorized audit companies (as it was previously provided) but also certain companies qualified for 'tax certification' upon a specific law,
- For the purpose of certifying their 'tax declarations' only as 'in compliance with the fiscal legislation', and not also their 'financial statements' (as it was previously provided).

In case a tax audit reassesses the tax liabilities of a taxpayer related to a certified period, the certifying company will be subject to a penalty amounting to 50% of the reassessed tax liabilities, in addition to the penalties already applicable on the concerned taxpayer.

*Previously, the penalty applicable on the certifying companies was equal to the reassessed tax liabilities.*

- **Increase of compliance with the tax legislation through taxpayers' self-correction**

- **Self-correction of tax returns**

Taxpayers will be entitled to file an amended tax return within 36 months (3 years) from the deadline of filing the original return. If such tax return has already been subject of a tax audit by the tax administration, it can be amended by the taxpayer within such deadline only if the intention is to declare a higher tax liability compared to the one assessed by the tax audit.

*Previously, taxpayers had the right to amend a tax return only within 12 months from the deadline of filing the original return.*

- **Statute of limitation for corrected tax returns**

It has been specified that corrected tax returns can be subjected to tax assessments by tax authorities or requests for tax reimbursement by taxpayers up to and within 5 years from the date of their correction.

- **Improvements to the tax audit process**

- **Tax audit notification**

Tax authorities will have the obligation to send to a taxpayer:

- A tax audit notification at least 30 calendar days prior to initiating the tax audit (with the exception of audits conducted following a reimbursement request submitted by the taxpayer),
- A fiscal visit notification at least 10 calendar days prior to starting the visit.

The tax audit notification will include not only the initiation date and time but also the termination date.

The tax audit initiation date can be postponed up to 15 working days, upon approval by the General Tax Director.

- **Voluntary pre-declaration and pre-payment of tax liabilities**

The taxpayer will be offered a 'self-declaration form', sent as attachment to the tax audit notification, for the voluntary pre-declaration and pre-payment of tax liabilities for any non-declared transactions.

The pre-declaration of such tax liabilities and the pre-payment of them and any related interest should take place during the 30 calendar days period prior to the tax audit initiation.

The tax liabilities concerned will be subject to the respective administrative penalties as provided by the Law, to be imposed through the tax audit assessment. However, in case the taxpayer has opted to pre-declare and pre-pay the tax liabilities as described above, such penalties will be capped to 50% (in case they are higher).

- **Tax Assessment Notice**

Tax authorities will determine in tax assessment notices also the value of reduction of the tax loss and of the tax credit balances, where applicable. *Previously, they were obliged to include in the tax assessment notice only the value of the reassessed tax liability, interest and penalties.*

- **Tax re-audit**

The decision to re-audit a tax period already audited, which is signed by the General Tax Director, should be attached to the tax audit notification and should clearly state the reasons for re-audit.

- **Revision of deadlines for tax audits following reimbursement requests**

In case of a tax audit following a tax reimbursement request submitted by a taxpayer, the audit deadlines (e.g. deadline for drafting the preliminary audit report, deadline for the taxpayer to present its objections,

deadline for drafting the final audit report etc.) will be limited respectively to 5 calendar days. This change will ensure the meeting of the 30 and 60 days deadline for the tax reimbursement approval and payment already provided by this Law.

### **Restructuring of the tax appeal function and process**

- **Tax Appeal Directorate and Tax Appeal Commission**

As of 01.01.2017, the Tax Appeal Directorate will be transferred under the organigram of the Ministry of Finance and will take decisions on tax administrative appeals concerning amounts under a threshold limit to be determined by a Decision of the Council of Ministers.

As of 01.01.2017, a new structure will be established under the Ministry of Finance and will be designated to analyse and take decisions on tax administrative appeals involving amounts above the threshold mentioned above – 'the Commission for Assessment of Tax Appeals' (shortly referred by us as 'Tax Appeal Commission').

The Tax Appeal Commission will be composed of seven members: three representatives of the Ministry of Finance, two representatives of the General Tax Directorate, the director of the Tax Appeal Directorate and one representative from the State Advocate. The expected Decision of the Council of Ministers will determine the composition and the operating procedures of the Tax Appeal Commission.

The tax appeal procedures as provided by the Law, will be equally applicable for both the Tax Appeal Directorate and the Tax Appeal Commission.

- **Burden of proof**

The burden of proof to verify that a tax assessment notice is not correct will be determined based on the provisions of the Administrative Procedures Code. *Previously, the burden of proof was determined as laying with the concerned taxpayer.*

- **Right of appeal by the Regional Tax Directorates**

The decisions of the Tax Appeal Directorate and the Tax Appeal Commission will be binding for the Regional Tax Directorate that issued the tax assessment subject to appeal. The latter will no longer have the right to initiate court procedures against such decisions.

### **Changes to certain administrative penalties**

Some administrative penalties have been revised with the intention to harmonize them with the decision of

the Constitutional Court no. 33, dated 08.06.2016. We have outlined below some of them.

- **Penalty for late filing of a tax return**

Late filing of a tax return will be subject of a penalty of ALL 10,000 for taxpayers registered for corporate income tax (CIT) and ALL 5,000 for other taxpayers (*previously, all taxpayers were subject of a penalty of ALL 10,000*)

- **Penalty for late payment of unpaid taxes**

This penalty (0.06%/day of delay, up to a maximum of 365 days) will be applicable even on the differences between the correct tax amount due for reimbursement by the tax authorities and the amount actually reimbursed by them. Whereas, the reduction of the tax credit balance of a taxpayer through a tax assessment will no longer be subject of such penalty.

- **Penalty for late payment of CIT instalments**

Prepayment instalments of CIT or simplified profit tax on small businesses will be subject to fixed penalties of 10% in case of failure to pay within the respective deadlines (*previously such penalty was 15%*).

- **Penalties for tax agents**

Penalties applicable on tax agents will be escalated as follows:

- 0.06% of the tax/tariff per each day of delay, up to a maximum of 365 days, if the tax agent has calculated, retained and declared the tax/tariff, but has not transferred it to the state budget;
- 50% of the tax/tariff if the tax agent has not calculated, retained, declared and paid it;
- 100% of the tax/tariff if the tax agent has calculated and retained it, but has not declared and transferred it to the state budget.

*Previously, a penalty of 50% was equally applicable for all the situations mentioned above.*

- **Non-declaration of employees and of factual salaries**

- In case of verification by a tax audit/visit of non-declaration of new employees at least 1 calendar day before they join:
  - o taxpayers registered for CIT and VAT will be subject of a penalty of ALL 200,000, whereas
  - o other taxpayers will subject of a penalty of ALL 50,000.
- Non-declaration of the full real remuneration of employees will be subject of a penalty of 100% of the concerned tax liabilities.

A taxpayer that will be found to repeat the same type of non-declaration, after having been subject to a

penalty as above, will no longer be considered to commit tax evasion.

- **Goods not accompanied by tax documents**

For the maintenance, utilization, or transportation of goods not accompanied by tax documents:

- Taxpayers not registered for VAT purposes, will be obliged to register as VAT-payers, to issue an 'invoice issued by the buyer' and will be subject of penalties of 100%;
- Taxpayers registered for VAT purposes, will be obliged to issue an 'invoice issued by the buyer', will be subject of re-assessment of the sales up to the market value of the goods, as well as of penalties of 100%.

*Previously, all taxpayers were subject to the seizure of goods by tax authorities, a measure that could be substituted by the immediate payment of a penalty equal to the market value of the goods.*

- **Electronic cash registers, fiscal coupons**

- Failure to install electronic cash registers (where applicable) will be subject to:
  - o penalty of ALL 50,000 for the first time such failure is found by tax authorities,
  - o impediment of activity up to 15 calendar days for the second time,
  - o continuance of the impediment if the situation persists beyond the 15 days and publication of the identification data of the taxpayer in the General Tax Directorate official webpage;
- Failure to issue fiscal coupons (where applicable) will be subject to:
  - o penalty of ALL 50,000 for the first time such failure is found by tax authorities, as well as tax re-assessment for the three recent months,
  - o impediment of activity up to 30 calendar days for the second time, and
  - o any other repeated case will be considered as tax evasion and will be accompanied by publication of the identification data of the taxpayer in the General Tax Directorate official webpage;
- Penalties for other failures related to the content of fiscal coupons or to the displaying of certain notes in a visible place in the location/address where the activity is carried out, have been unified to a fixed a penalty of ALL 50,000 per each case.

- **Failure to issue fiscal invoices**

- Subject to penalty of 100% of the under-declared tax for the first time such failure is found by tax authorities,
- In addition to the penalty above, for the second time:

- A taxpayer not registered for VAT purposes, will be obliged to register as VAT-payer,
  - A taxpayer registered for VAT purposes and subject to the simplified profit tax on small businesses, will be obliged to register as CIT-payer,
  - A taxpayer registered for VAT and CIT purposes will be immediately included in the list of 'risk taxpayers' for the risk analysis performed by tax authorities when selecting taxpayers for tax audit.
- For the third and subsequent times, in addition to the above, the taxpayer will be considered to commit tax evasion.

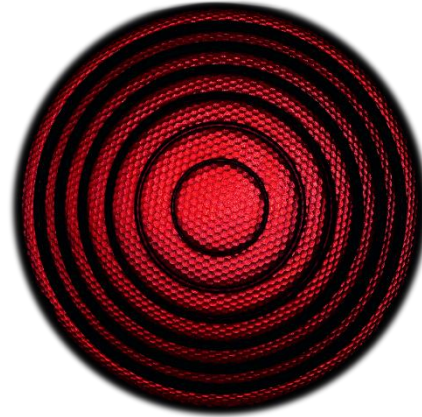
### Re-organisation of the tax administration on functional basis

As of 01.01.2017, the tax administration will be organized in directories and units according to two main functions: base and operational functions (such as tax audit, tax collection, taxpayers' service, registration and education etc.), and supporting functions (such as finance, IT, HR, legal and technical services etc.).

The Tax Appeal Directorate will no longer be part of the organisational structure of the central tax administration (see also above).

The General Tax Director will be nominated and dismissed by the Council of Ministers, after proposal by the Minister of Finance (*previously he/she was nominated and dismissed by the Prime Minister*).

Deputy General Tax Directors will be nominated and dismissed in accordance with the legislation on civil servants, after proposal by the Minister of Finance (*previously he/she was nominated and dismissed by the General Tax Directorate*).



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