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I. Full decision of the Constitutional Court on the partial abrogation of the amendments to the Law no. 9920, dated 19.05.2008 “On Tax Procedures”

As announced in our [Tax News of February 2015](#), in the hearing dated 03.03.2016, the Constitutional Court ruled on the partial abrogation of the anti-avoidance measures and penalties that were initially introduced in the law on Tax Procedures in October 2015.

The full judgement and reasoning of the Constitutional Court with regards to the measures and penalties abrogated has now been published in the [Official Gazette no. 108, dated 16.06.2016](#), under Decision no. 33, dated 08.06.2016.

Whereas, the measures and penalties that continue to remain in force are summarized in our [Tax News of February 2015](#).

II. Amendments to the Decision no. 953, dated 29.12.2014 “On implementing provisions of the Law on VAT”

Through the decision no. 460, dated 22.06.2016 of the Council of Ministers, published in the [Official Gazette no.120, dated 28.06.2016](#), article 10 of the Decision no. 953, dated 29.12.2014 “On implementing provisions of the Law on VAT” has been amended.

The main amendments thereby introduced are as follows:

- 1- Based on paragraph 3 of article 77 of the Law on VAT, taxable persons exporters and re-exporters of non-Albanian goods (under inward processing upon the Custom Code) will be reimbursed automatically as “zero risk taxpayers within 30 days from the submission of the reimbursement request, if the following criteria are met:
 - Exports constitute more than 70% of the total sales in the periods for which the reimbursement is requested (*previously to be considered as a “zero risk exporter” the export value should be 100% of the total sales of the taxpayer*);
 - At least 1 year of export activity;
 - Should provide as evidence the exports clearance form;
 - Should not have any outstanding social security and health insurance contributions liabilities.
- 2- Taxable persons with a proportion of exports to the total sales (including exports) between 50%-70% will be reimbursed within 30 days from the submission of the reimbursement request, while becoming subject to the risk analysis procedures. (*Previously, only taxpayers exporting Albanian goods with a proportion of exports to the total sales (including exports) at least 60% of the total sales value, could be reimbursed within 30 days, becoming as well subject of risk analysis procedures.*)
- 3- All other categories of exporters which do not fall under the above categories, may be reimbursed within 60 days, nevertheless becoming subject of the risk analysis procedures.

III. Decision of Administrative Court of Gjirokastra no. 261, dated 27.04.2016

On 27.04.2016, the Administrative Court of Gjirokastra has ruled in favour of a taxpayer against the Regional Tax Directorate, regarding a penalty of ALL 100,000 imposed by the latter, for failure to declare newly hired employees.

The Regional Tax Directorate carried out a tax audit on taxpayer's site and found present two individuals who were not declared as taxpayer's employees.

On 1.11.2015 a Tax Assessment Notice for the tax liability of ALL 100,000 was issued by the Regional Tax Directorate.

The taxpayer argued that two individuals were teachers conducting their training program and it was

proven to the court through the training contract between the taxpayer and the trainers.

Administrative Court of Gjirokastra, after certain verifications, has ruled in favour of the taxpayer arguing that:

- The Regional Tax Directorate has failed to follow the required legal procedures as the inspectors did not keep regular records at the moment of the verification;
- It was proved that the individuals found at the taxpayer sites were trainers and were conducting their training course program and as such, the taxpayer did not have the obligation to declare them as employees.

IV. Decision of Administrative Appeal Court of Vlora no. 720, dated 06.04.2016

The Administrative Appeal Court of Vlora has ruled against the request of a taxpayer whose activity is wholesale import-export and retail of crude oil regarding a penalty imposed by the Regional Tax Directorate of Berat for failure to pay output VAT.

The taxpayer claimed to have obtained the respective exemption authorisation from National Agency of Natural Resources (AKBN) for the disputed supply of oil diluent to a hydrocarbon contractor and that tax authorities are obliged to take into consideration the AKBN's authorisation.

During the tax audit, it has been found that the authorisation was received in September 2012, while the supply of goods was carried out in June 2012. The taxpayer did not calculate and pay the VAT on the supply of goods although the exemption certificate was not granted yet.

The Court has ruled against the taxpayer arguing that:

- Tax authorities do have the right to verify whether the VAT exemption received from AKBN is in accordance with law on VAT and its bylaws;
- AKBN is the competent authority to certify only if a taxpayer is a contractor or a subcontractor in hydrocarbon operations according to the provisions of the relevant legislation. Whereas, it is under the competences of the tax authorities to verify the duly application of the tax legislation.

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