

Tax News

November 2015

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Amendments to Instruction no. 24, dated 02.09.2008 “On tax procedures”

The amendments brought by Instruction no. 31, dated 27.11.2015, published in the Official Gazette no. 205, dated 01.12.2015, and entering into force on 01.12.2015, provide procedures and methods of implementation of the recent measures against tax informality. Such measures, brought by amendments to the Law no. 9220, dated 19.05.2008 “On tax procedures”, have already been presented in our [Tax News of October \(click here\)](#).

In this Tax News we have summarized the implementation guidance brought by the Instruction for each of such legal measures. We therefore invite you to read each of the following items in conjunction with the respective items in our [Tax News of October \(click here\)](#).

‘Tax certification’ of tax declarations

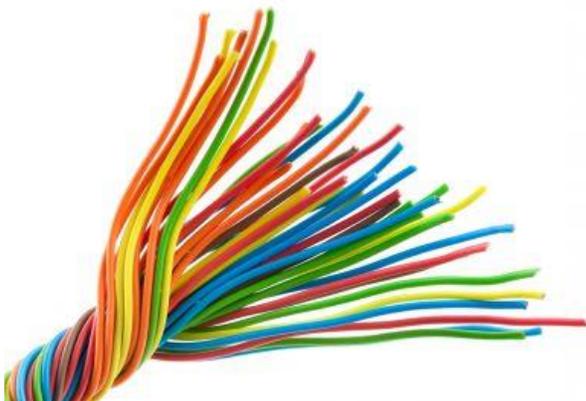
- [Tax declarations subject to tax certification](#)

The Instruction specifies the types of tax declarations that can be subjected to tax certification by authorized audit companies: the annual Corporate Income Tax return, the annual Simplified Profit Tax return on Small Business and the monthly VAT return.

Note: Unlike the Law, the Instruction does not refer to any ‘tax certification of financial statements’.

- [Benefit of taxpayers in certifying their tax declarations](#)

The tax certification is an option, not an obligation of the taxpayers. The certified tax declarations will be subject to tax audit from the tax administration based on the regular and usual audit procedures. However, the fact that a certain tax declaration has been ‘certified’ will be taken into consideration by tax authorities in the risk analysis they perform to select taxpayers for an audit.



- **List of authorized audit companies**

Within 12.12.2015, the Ministry of Finance is expected to publish the competition procedures for audit companies that wish to obtain the right to perform tax certification services.

Only audit companies that meet the following criteria will be selected and entitled to perform tax certification:

- i. Statutory audit companies included in the [Public Registry of Certified Accounting Experts \(IEKA\)](#),
- ii. With at least 10 years of working experience on audit, accounting and tax advisory, and
- iii. With at least 1 statutory auditor in the role of engagement partner with a working experience of not less than 5 years.

Audit companies that individually do not meet such criteria will anyway have the right to apply if they submit a joint collaboration agreement determining the respective rights, obligations and collaboration terms.

The list of selected audit companies will be published within 30 days from the announcement of application procedure. Such list will be valid for a period of 4 years. The quality control of tax certification engagements of audit companies will be performed in accordance with IEKA's regulations and based on an agreement between the General Tax Directorate, the Public Supervision Board and IEKA. The Ministry of Finance may exclude from the list companies that are found to significantly fail in following the procedures for such engagements, to make errors with considerable effect in the tax liability, to cause intentional inaccuracies to avoid tax, to not comply with obligations under the anti-money laundering regulations, etc.

- **Engagement of authorized audit companies**

Authorised audit companies will be entitled to provide tax certification services only to those companies for which such audit companies, their employees or related parties, have not performed any accounting, tax and similar advisory services in relation to the preparation of the concerned tax declarations.

Authorised audit companies may perform certification services for the same taxpayer and same tax for no longer than 4 consecutive years. After a 1-year pause, the services may re-start for another 4-years period.

- **Procedures of tax certification**

The product of the tax certifications services should be a 'certification report' which should contain 'reasonable details' and 'necessary calculations' for all items on which the taxpayer and the audit company have agreed as well as for those on which they have not agreed.

Note: The Instruction does not provide any guidance on the audit standards applicable on such engagements and the level of assurance involved. Furthermore, the

framework based on which the certification will be performed is too broad: the legal dispositions, the principles and standards of accounting, and the fiscal legislation, altogether.

- **Responsibility of authorized audit companies**

The audit company will be held 'jointly and proportionally liable with the taxpayer on the tax liabilities deriving from any errors occurred during the verification and certification process.

In case a tax audit reassesses the tax liabilities of a taxpayer whose tax declarations have been 'certified by an audit company', the taxpayer will be subject to the full amount of the additional tax liabilities (and related interest and penalties), whereas the audit company bear a penalty amounting equally to those tax liabilities.

- **Interest on late payment of CIT instalments**

Fixed penalties of 15% will be applicable on the unpaid prepayment instalments of corporate income tax or simplified profit tax on small businesses that belong to the periods after 12.11.2015 (date of entry in force of the amendment to the Law) and that fall due after that date.

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

The charge with a penalty of 500,000 ALL (in addition to the unpaid tax, interest and related penalties) and the subsequent charge of the taxpayer with criminal offence in case of repetition of the same type of non-declaration, will start to be applicable since 12.11.2015 (date of entry in force of the amendment to the Law).

For the assessment of the factual salaries, the tax administration will use alternative methods of assessment according to article 72 of the Law.

- **Goods not accompanied by tax documents**

The Instruction provides details for the preparation and registration of the 'invoice issued by the buyer' to willingly self-declare the non-documented goods in stock within 31.12.2015.

The declaration of the goods according to such procedure is allowed to be made only once within 31.12.2015.

For all goods in stock (held for sale or use) which are not supported by any regular tax document verifying their purchase, the taxpayer should issue 'an invoice issued by the buyer', without applying VAT. The invoice should prescribe all types of goods and the respective quantities. If one invoice is not sufficient to include all goods, multiple invoices can be issued, all on the same date. The declaration of the invoice(s) shall be performed electronically, through the upload in the e-tax system, within 3 days from the date of the invoice(s) but not later than 31.12.2015.

The accounting treatment of such documents shall be made according to the accounting standards applicable.

Such document will not serve to justify the deductibility of the expenses (related to the sale or use of those goods) for Corporate Income Tax purposes. It will only serve to avoid being subject to penalties and other measures provided by the Law in case of maintenance, utilization or transportation of goods not accompanied by tax documents.

Secondary addresses

The Instruction provides a simple example to illustrate that taxpayers that will be found to conduct activity in non-declared addresses (for which there are no updates of information registered with the National Registration Centre), but maintain, utilize or transport goods accompanied by regular tax documents, will be subject to a penalty of 500,000 ALL.

Restriction of sales to end-customers by wholesalers

The Instruction emphasises that for taxpayers having points of wholesale activity and points of retail activity at separate addresses, equipped with separate secondary NIPT certificates and separate cash registers, the restriction brought by the Law for sales from wholesalers to individuals (non-businesses) will be applicable only to the addresses identified as for wholesale activity.

Vehicles equipped with secondary NIPT certificates and used for "door to door" wholesales, will be considered as wholesale points of sale.

Electronic cash registers, fiscal coupons, fiscal invoices, lists of prices

The Instruction merely repeats the information in relation to the various amendments introduced by the Law for taxpayers subject to mandatory installation of cash registers and issuance of fiscal coupons and fiscal invoices (please refer to our [Tax News of October](#)).

It specifies that the charge with the amended penalties (as introduced by the Law) and the subsequent charge of the taxpayer with criminal offence in case of repetition of the same type of non-compliance, will start to be applicable since 12.11.2015 (date of entry in force of the amendment to the Law).

It also specifies that the penalties and measures applicable to wholesalers for failure to issue fiscal invoices, are not applied in cases where the difference between the accounting inventory and the physical inventory is found to be less than 1%.

Correction of tax declarations deliberately filed incorrectly

The tax administration will not file criminal charges for taxpayers that willingly declare and correct a tax

declaration which they have deliberately filed incorrectly (i.e. have committed 'tax evasion') and pay the related liabilities and interest within 31.12.2015.

Such correction will be self-declared by the taxpayers with the current tax declarations within 31.12.2015 or will be performed through a reassessment by the tax administration, upon the taxpayers' request. The Instruction illustrates this procedure with an example.

If the taxpayers need help to calculate the interest on late payment or to perform the self-declaration procedure, they can address a written request to the respective regional tax office. The latter should reply within 4 working days and in the meantime, is not entitled to start an audit at the taxpayer.

This disposition is not applicable on capital/funds raised upon illegal actions or activities.

Cancellation of certain liabilities accrued due to the new IT system

The Instruction merely repeats the amendment to the Law outlining that due to the implementation of the new IT system, certain taxpayers have been erroneously charged with obligations for taxes to which they were not liable. Penalties and interest accrued in the e-tax system until 31.08.2015 for this reason will be cancelled.

Forced collection of taxes

As part of the procedures for forced collection of taxes (please refer to our [Tax News of October](#)) the seizure of not less than 50% of the turnover realized during the day monitored by the tax inspectors, is made through a 'seizure order' issued by the Regional Tax Director. Such order shall include identification data of the taxpayer, legal basis for the seizure, the amount of total daily turnover, the amount of the turnover which is subject to seizure order and a clear provision of the obligation of the taxpayer to make the payment within the following working day.

Transfers of money from the taxpayer account, as well as any transfer of the taxpayer's assets or capital, will be prohibited, unless those payments aim to pay 100% of the outstanding tax liabilities. For this reason, tax administration sends to the National Registration Center and to the banks where the taxpayer has bank accounts, the notification of the payment request.

Database of IMEI numbers of mobile phones

Same as the Law, the Instruction outlines that failure to upload or an incorrect upload of IMEI numbers will be subject to a penalty of 30,000 ALL for each case.

Local tax liabilities for taxpayers conducting activity through intermediaries

Taxpayers that carry out their activities through intermediaries (which, on their turn, conduct intermediary

as well as independent activities in their own addresses), will not be liable to local taxes on the intermediaries' addresses, as long as the intermediaries pay the local taxes applicable on their registered addresses. The Instruction provides as a typical example the case of taxpayers licensed for the organisation of the National Lottery.

Conflict of interest

Same as the Law, the Instruction indicates that officials of the central and local tax administration will be prohibited to have accounting or fiscal consultancy firms under their or their family members' ownership or related parties according to the law on avoidance of conflict of interest. In case of conflicts of interest, the officials will be dismissed and will have no right of further employment with the tax administration.

Law no. 122/2015, dated 12.11.2015, "On ratification of the agreement between Republic of Albania and Republic of Macedonia, on social security"

This agreement ratified by Law and published in the Official Gazette no. 201, dated 24.11.2015, provides the regulations that coordinate the legislative provisions of both countries on social security. This coordination ensures that the benefits gained or in process have the same effect under the respective legislation.

Authorization of Minister of Finance on promotional gambling with fiscal coupons

Following the measures against tax evasion and avoidance, the Minister of Finance issued an authorization to the General Tax Directorate, to organise the promotional gambling with fiscal coupons.

The promotional gambling will be organised from 15.11.2015 to 31.12.2015. Everyone can be part of this promotional gambling by collecting not less than 50 coupons of a total value of equal or higher than ALL 5,000. The draw will be organised on 16.01.2016. The winning prices shall be at the range between ALL 10,000 – ALL 3,000,000.

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