

Tax & Legal News

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In this issue:

I. Court Decisions on tax matters

II. Decision no. 434, dated on 20.05.2015 “For the determination of levels of field losses, scraps and damages during production, storage, transportation etc., recognized for fiscal purposes”

III. The new Double Tax Treaty with Kosovo effective as of 01.01.2016

IV. Instruction no. 15, dated on 18.05.2015 “On determination of the procedures for disclosing of information by every person pursuant to the provisions of the international tax agreements”

V. Amendments to the Decision no. 205, dated 13.04.1999 “On implementing provisions of the Customs Code of the Republic of Albania, as amended”

VI. Amendment to Decision no. 781, dated on 14.11.2007 related to the technical and functional features of the fiscal equipment



I. Court Decisions on tax matters

In light of the amendments to the Law no. 9920, dated 19.05.2008 “On tax procedures”, the General Tax Directorate (GTD) has started the publication in its official website of the final decisions of the Administrative Court of Appeal, Supreme Court and the Constitutional Court on tax matters. We have summarized below the topics addressed in the last 3 published Decisions. Please find the summary of the first 5 Decisions in our [April Tax & Legal News](#).

Deduction of input VAT on advertising services, on performance bonuses and other tax matters related to a mobile telecommunication company ([Decision no. 650, dated on 03.04.2015](#))

The Administrative Court of Appeal has ruled on certain tax matters involving a taxpayer operating in the mobile telecommunication industry.

- [Deduction of input VAT on advertising services supplied from marketing operators other than written and electronic media](#)

The Large Taxpayers Directorate (LTD) has challenged the credit of input VAT on advertisements produced/published by marketing agencies by claiming that: (1) these services should have been exempt from VAT in the first instance, based on article 25/3 of Law no. 7928, dated 27.04.1995 “On VAT”, and (2) in any case, they qualify as promotional and advertising supplies subject to limitation of credit of input VAT by the buyer based on article 19.4 of Instruction no. 17, dated 13.05.2008 “On VAT”.

The Administrative Court of Appeal has ruled in favor of the taxpayer by confirming that: (1) the services provided by marketing operators other than written and electronic media, are taxable supplies, and (2) the input VAT on advertisements produced/published by these marketing operators is deductible on the part of the taxpayer as they are not promotional and advertisement services in the meaning of article 19.4 of the above mentioned Instruction.

- [Deduction of input VAT on performance bonuses paid to distributors](#)

The LTD has challenged the credit of input VAT and deductibility for Corporate Income Tax (CIT) of expenses related to bonus commissions paid by the taxpayer to its distributors, by considering them as 'gifts'.

The Court has ruled in favor of the taxpayer by considering the performance bonuses as expenses incurred for the main economic activity and proportionally related to the attainment of business objectives.

- [Deduction for CIT purposes of expenses related to consultancy services supplied by a non-resident company, not settled within the year](#)

The LTD has considered the consultancy services provided by a non-resident company as non-deductible expenses, on the grounds that the taxpayer did neither settle the liability towards the supplier nor pay the withholding tax within the year end.

The Court has ruled in favor of the taxpayer after he proved he had paid in excess (prepaid) certain amounts of withholding tax in the course of that year. The Court considered those amounts as associated with the withholding tax due on the consultancy services at hand.

- [Deduction for CIT purposes of legal expenses related to an international arbitrage litigation process](#)

The LTD has assessed as non-deductible for CIT purposes the legal expenses related to an international arbitrage litigation process, on the grounds that they do not contribute to the earning of income or assurance and maintenance of any taxable profit.

The Court has ruled in favor of the taxpayer by evaluating the subject matter of the litigation process (dispute related to an interconnection service agreement) as directly related to the business interests and activities of the telecommunication company.

- [Deduction for CIT purposes of sponsorship commissions](#)

The LTD has assessed as non-deductible for CIT purposes the commissions paid to companies engaged

with public relations and the management of sponsorships granted by the taxpayer.

The Court has ruled in favor of the tax authorities by confirming the view that these commissions do not classify as sponsorship expenses (deductible up to a certain level) and do not contribute to the economic activity that generates income.

[Penalties for late declaration of newly hired or dismissed employees \(Decision no. 152, dated on 24.03.2015, pages 1-5\)](#)

The Regional Tax Directorate of Korca has imposed to a taxpayer a penalty due to late declaration of newly hired or dismissed employees.

The taxpayer defended his position by arguing that:

a) The new employee was declared on the 30th of January as hired on the 1st of January by mistake, when instead his commencement date was on the 1st of February;

b) The dismissed employee was declared on the 24th of January as leaving on the 1st of January, when instead he was still employed but was granted unpaid leave until the 30th of January.

The Administrative District Court of Korca ruled in favor of the tax authorities.

[Penalties for underpayment of social and health contributions of one month, because of an overpayment in the previous month \(Decision no. 113, dated on 05.03.2015, pages 6-11\)](#)

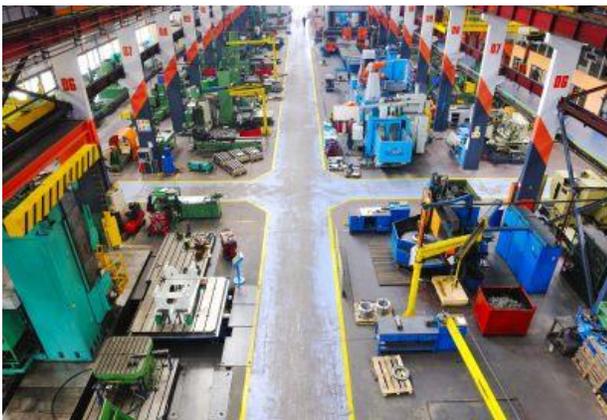
A taxpayer has been subject to penalties and interest for underpayment of social and health contributions of the month of November 2013. The taxpayer claimed that the amount due (of ALL 30,000) was already paid in excess/advance by him in October 2013. Therefore, the taxpayer decided to self-compensate one part of the amount due with the amount paid in advance one month earlier.

The Administrative District Court of Korca ruled in favor of the tax authorities by judging that payment in advance does not constitute a 'payment within the deadline due' under the meaning of article 114/1 of Law no. 9920, dated 19.05.2009 "On tax procedures".

II. Decision no. 434, dated on 20.05.2015 “For the determination of levels of field losses, scraps and damages during production, storage, transportation etc., recognized for fiscal purposes”

This Decision was published in the Official Gazette no. 86, dated on 27.05.2015 and entered into force on that date. It determines the levels of losses, scraps and damages of goods that will be allowed as deductible for CIT purposes:

- a) Field losses, scraps and damages during production, storage and transportation of products subject of excise tax – levels allowed determined according to Decision no. 612, dated on 05.09.2012 “On implementing provisions of the excise law”;
- b) Losses of combustible materials/fuel utilized in the production process by manufacturing companies – levels allowed determined according to Decision no. 612, dated on 05.09.2012 “On implementing provisions of the excise law”;
- c) Scraps and field losses in the tobacco manufacturing industry – levels allowed determined according to Decision no. 687, dated on 18.06.2009 “For determining the allowed levels of scraps and field losses in the tobacco manufacturing industry”;
- d) Losses during the production process of manufacturing machinery and production lines for which there are no specific legal and sub-legal acts – levels allowed to be calculated based on technological cards and schemes of the production process accompanying such machinery and lines and to be verified by tax authorities during an audit at the taxpayer premises;
- e) Losses of electricity during transmission – levels allowed determined according to Decision no. 171, dated on 25.02.2015 “For the approval of the financial recovery plan of the electricity sector”;
- f) Field losses on transportation and warehousing of goods (excluding those subject of excise tax, see item a) above) – no levels allowed.



Within 45 days from the entry into force of this Decision (i.e. within 11th of July 2015) all interested taxpayers should submit to the respective Regional Tax Directorate the documentation for approval of field losses, including:

- a) Technological cards;
- b) Detailed description of the production process;
- c) Blueprint of the object;
- d) Levels of the raw material consumption and work hours for finished product units (according to technological cards), supported by relevant information on the nature of the raw material used and the phases of the technologic process where it is involved.

The technological cards should be confirmed/certified from a recognized Albanian institution e.g. the National Agency of Natural Resources (AKBN), the Institute of Construction Materials, the National Food Authority (AKU), the General Directorate of Standards, the Directorate of Patents and Trademarks, the National Agency of Drugs and Medical Devices, etc.

Field losses, scraps and damages shall be allowed as deductible for CIT purposes only up to the levels approved by the Regional Tax Directorates based on the above procedure, and only for periods after the date of approval.

III. The new Double Tax Treaty with Kosovo effective as of 01.01.2016

The GTD has announced that the new Double Tax Treaty with Kosovo, brought by Law no. 62/2014, dated 19.06.2014 ([click here](#)), has entered into force on 11.03.2015.

However, its financial effects will start from 01.01.2016, i.e. the provisions of the current Double Tax Treaty (between Albania and the UN interim administration mission in Kosovo, signed on 28.09.2004) ([click here](#)) will be applied until 31.12.2015.

IV. Instruction no. 15, dated on 18.05.2015 “On determination of the procedures for disclosing of information by every person pursuant to the provisions of the international tax agreements”

This Instruction, published in the Official Gazette no. 83, dated on 25.05.2015 and entered into force on that date, is in line with the provisions of the international tax agreements entered by the Republic of Albania that foresee administrative assistance on tax matters and exchange of information.

Based on this Instruction, the GTD can request information from and about every person, including, but

not limited to, the information retained by banks and other financial institutions.

Within 7 days from receiving a request for tax information from a foreign tax administration, the GTD sends a written request to the person obtaining such information. This person should provide the requested information in written form to the GTD within 30 days from receiving the request. In case of failure to meet this deadline, this person becomes subject of a penalty in the range of ALL 10,000-50,000, in line with article 126 "Refusal to provide information" of the Law no. 9920, dated on 19.05.2008 "On tax procedures".

V. Amendments to the Decision no. 205, dated 13.04.1999 "On implementing provisions of the Customs Code of the Republic of Albania, as amended"

These amendments were brought by Decision no. 366, dated on 30.04.2015, published in the Official Gazette no. 76, dated on 15.05.2015 and entered into force on that date.

They introduce the applicable requirements, conditions and procedures related to granting authorization to economic operators for using simplified customs clearance procedures (known as 'local clearance' procedures) at their premises or in another approved location and releasing the goods from the clearance procedure at such location.

VI. Amendment to Decision no. 781, dated on 14.11.2007 related to the technical and functional features of the fiscal equipment

This amendment was brought by Decision no. 349, dated on 29.04.2015, published in the Official Gazette no. 72, dated on 11.05.2015.

It outlines the detailed procedures in case of defaults of the integrated electronic cash registers utilized by petrol stations in Albania. It comes in light of the recent amendments for the prohibition to petrol stations for conducting sales without printing fiscal coupons (see [April Tax & Legal News](#)).

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