

In this issue:

I. The new Law on VAT



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The new Law on VAT, Law No. 92/2014, has been approved by the Albanian Parliament on 24 July 2014 and has been published in the Official Gazette No. 128, dated 13 August 2014. It will enter into force **as of 1 January 2015**, by abolishing the current Law on VAT No. 7928 dated 27 April 1995 as amended, as well as the related sub-legal acts for its implementation. The Ministry of Finance is expected to issue the necessary Instruction(s) within 4 months from the date of publication of this new Law in the Official Gazette (expected within 13 December 2014).

The new Law is conceived and structured in line with the European Union Council Directive 2006/112/EC of 28 November 2006 on the common system of Value Added Tax, as amended (following “the EU Directive”). The aim of the Law is to significantly harmonize the Albanian VAT legislation with the EU Directive, in attendance of a full adaptation with the membership of Albania in the EU.

The new Law regulates many aspects not addressed in the current Law and brings significant changes to the main principles and rules. We are mentioning below some of the most important ones.

- It provides a clearer definition of a **‘taxable person’** for VAT purposes, by introducing the notions of ‘economic activity’ carried out ‘independently’, regardless of the ‘place of conduct’, ‘the purpose’ and ‘the result’.
- It extends the concept of **‘supply of goods’**, by treating as such also certain interests in immovable property; shares or interests giving the holder rights of ownership or possession over immovable property; etc.

- It extends the definition of **'supply of services'** by defining as such also the assignment of intangible property (whether or not with title of ownership); transactions related to shares and obligations; obligations to refrain from acting; services performed in pursuance of an order made by a public authority; etc.
- It provides more detailed rules for the **'self-supply'**, as well as for the **'transfer of economic activity'**. It defines the latter as consisting not only in the transfer of a totality of assets or part thereof, as provided in the current Law, but including as well, the transfer of the related rights and obligations, accounting and tax books etc. Furthermore, unlike the current Law, the new one specifies the requirement and procedure for prior notification to the General Tax Directorate by the parties to the transaction.
- The definition of the **'place of supply of goods'** is similar to that provided in the current Law but, the new one brings some additional specifications as regards the place of supply of the following:
 - Goods that are installed or assembled by or on behalf of the supplier;
 - Goods that are supplied on board ships, aircraft or trains;
 - Gas, electricity, heat and cooling energy, and water through distribution systems;
 - Goods for wholesale or retail; etc.
- One of the most important and significant changes brought by the new Law consists in the new rules for determining the **'place of supply of services'**. It introduces a general rule for the determination of the place of supply of services depending on the VAT status of the beneficiary:
 - For services provided to a taxable person i.e. Business-to-Business ("B2B"): *"the place of supply is where the recipient has established his business, has created his fixed establishment or has his permanent address"*;
 - For services provided to a non-taxable person i.e. Business-to-Consumer ("B2C"): *"the place of supply is where the supplier has established his business, has created his fixed*

establishment or has his permanent address".

Furthermore, it introduces a broad list of exceptions to the general rule applicable to: both, B2B and B2C services; only to B2B services; only to B2C services; as well as certain related to intermediary services.

- The new Law provides clearer rules as regards the **'moment when VAT becomes chargeable'**, not only for the supply of goods and services, but also for imports of goods under free circulation or special customs regimes.
- The new Law brings a more extended definition of the **'taxable amount'** by introducing new notions, such as the 'open market value', and new elements to consider, such as 'incidental expenses', 'returnable packaging material', 'price reductions and discounts', 'rebates', 'reference value for customs purposes', the official 'exchange rate', etc.



- The new Law includes an extensive list of **'exempt supplies'**, the majority of which is as transposed from the EU Directive. Some of the most important supplies that, contrary to the current Law, are classified as exempt in the new Law, are the following:
 - All types of insurance and reinsurance transactions (i.e. not only life-insurance as in the current Law), including related services performed by insurance brokers and insurance agents;

- Supply of services and of goods closely linked to welfare and social security work; to the protection of children and young persons; to sport or physical education; to certain cultural services and goods; if provided by public institutions and/or non-for-profit organizations, based on certain criteria;
- Supply of human organs, blood and milk;
- Supply of services by dental technicians in their professional capacity;
- Leasing of permanently installed equipment and machinery; etc.

- Nevertheless, a few exempt supplies provided by the current Law, which are not in line with the EU Directive, but which reflect the fiscal incentive policies adopted by the Albanian government for certain economic sectors, are kept and included in the new Law. Some of the most important ones are the following:

- Supply of pharmaceutical products (drugs/medicaments);
- Supply of ID cards;
- Supply of printing house services for newspapers, supply of newspapers, periodicals and books;
- Supply of advertisement services by written and electronic media;
- Supply of goods and services classified as related to the research phase of hydrocarbon operations.

- Some of the most important supplies that are currently exempt, but will no longer be such under the new Law are the following:

- International services (article 25/9 of current Law), because their taxability or exemption will be now determined based on the new rules for the place of supply of services;
- Supply of packaging materials for the production and packaging of pharmaceutical products;
- Supply of iron and cement used as raw materials in the construction of hydropower stations;

- Subcontracting services for inward processing of non-Albanian goods intended for re-export.



- The new Law specifies a more extensive list of **'exemptions on import of goods'**, by having better regard to the provisions of the Albanian Customs Code. A few exempt importations provided by the current Law, which are not in line with the EU Directive, but which reflect the fiscal incentive policies adopted by the Albanian government for certain economic sectors, are kept and included in the new Law:
 - Import of machinery and equipment for investments of contractual value higher than 50 million ALL; for inward processing and agribusiness activities; for the production activity of small enterprises;
 - Import of goods and services related to the research phase of hydrocarbon operations; etc.
- On the other hand, unlike the EU Directive that exempts the importation of gas, of electricity, of heat or cooling energy through distribution networks, the new Law continues to keep them as taxable at standard rate.
- It clarifies further the **'supplies taxable at 0%'**, including those related to export of goods, to international transport, to customs warehousing arrangements, to diplomatic and consular arrangements, to NATO, etc.
- The rules for **deduction of input VAT** are similar to those of the current Law. Luxuries and representation expenses are added to the list of **deduction limitations**, whereas promotional products and services are excluded.

Taxpayers that make both, taxable and exempt sales, will calculate and apply the **percentage for proportional deduction** of the VAT on purchases in a similar method, but will need to adjust differently the VAT over/under-credited after the year end.

- The new Law provides a clearer specification of the **'person liable to pay VAT'**, being either the supplier or the beneficiary, depending on their respective VAT status and fiscal residence. It explains when the non-resident person is liable to personally pay VAT on a supply by appointing a **fiscal representative for VAT purposes** in Albania, and when, instead, the person liable for calculating and paying VAT on a supply is the Albanian beneficiary through the **reverse-charge mechanism**.
- The new Law introduces the **'electronic invoice'**. However, since the issuance and delivery of an electronic invoice requires the set-up of the necessary infrastructure and technology to ensure the authenticity of the origin, the integrity of the content and the legibility of the invoice, such as an advanced electronic signature or the electronic data interchange ("EDI"), the provisions related to the electronic invoicing will enter into force only after full membership of Albania in the EU.

- The new Law introduces **special schemes** for certain activities and taxpayers:
 - Special scheme for small enterprises;
 - Special scheme for travel agents;
 - Special scheme for second-hand goods, works of art, collectors' items and antiques;
 - Special scheme for investment gold – *this scheme enters into force only after full membership of Albania in the EU;*
 - Special scheme of compensation for agricultural producers (farmers) – *the only provision of the new Law which entered into force earlier, on 28 August 2014, 15 days after the publication of the new Law in the Official Gazette, by abolishing the respective articles under the current Law (articles 58.1, 58.2, 58.3 and 58.4).*



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