

Tax News

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I. Final decision of the Constitutional Court on the partial abrogation of the amendments to the Law no. 9920, dated 19.05.2008 “On Tax Procedures”, providing measures against fiscal informality

As announced in our Special [Tax News of December 2015](#), through the intermediary decision of the Constitutional Court, the Law no. 99/2015 “On some amendments in the Law no. 9920, dated 19.05.2008 “On Tax Procedures in the Republic of Albania”, (published in the official Gazette [no. 187, dated 28.10.2015](#), and included in our [Tax News of October](#)), was suspended until a final decision.

In the hearing dated 03.03.2016, the Constitutional Court handed down the final decision and ruled for the partial abrogation (abrogation of articles 5, 14, 15, 16/4, 17/1, 17/2, 18/ 2 and 20) of the law no. 99/2015 “On some additions and amendments on the law no. 9920, dated 19.05.2008 “On tax procedures in Republic of Albania”, as amended (click [here](#) for the media press release of the Constitutional Court in Albanian).

We have summarized below the **amendments which**, according to the final decision of the Constitutional Court, **remain in force**:

‘Tax certification’ of financial statements and tax declarations

This amendment introduces the concept of ‘tax certification’. Taxpayers will have the possibility to engage certain authorized audit companies to certify their ‘financial statements and tax declarations’ as ‘in



compliance with the fiscal legislation'. The fact that a taxpayer has opted and obtained such 'tax certification', will be taken into account by the tax administration in the risk assessment and analysis it performs when selecting taxpayers for tax audit.

In case a tax audit reassesses the tax liabilities of a taxpayer related to a period 'certified by an audit company as in compliance with the tax legislation':

- the taxpayer will be subject to the full amount of the additional tax liabilities (and related interest and penalties), whereas
- the audit company will be subject to a penalty amounting equally to those tax liabilities.

The relevant procedures, criteria and list of authorized audit companies are expected to be determined by an Instruction of the Minister of Finance.

Interest on late payment of CIT instalments

Prepayment instalments of corporate income tax or simplified profit tax on small businesses will be subject to fixed penalties of 15% in case of failure to pay within the respective deadlines.

Goods not accompanied by tax documents

Taxpayers that willingly self-declare the goods without tax documents that they have in stock, by issuing an 'invoice issued by the buyer' within 31.12.2015 (and before such non-compliance is identified by a tax inspection), will not be subject to the penalties of article 121 of the Law. The procedures of self-declaration will be provided by an Instruction of the Minister of Finance.

Restriction of sales to end-customers by wholesalers

Until 31.03.2016, wholesalers are allowed to sell goods with regular fiscal coupons to individuals (non-businesses), by not exceeding 10% of the taxable amount (excluding VAT) of goods sold during the same month in the previous year. Starting from 01.04.2016, wholesalers will no longer be allowed to sell to individuals.

Until 31.03.2016, for sales to individuals in excess of the 'monthly 10% limitation' as outlined above, wholesalers will be subject to a VAT re-assessment, based on the VAT that corresponds to the retail prices of the goods sold. Furthermore, they will be subject to a penalty of 100% the amount of VAT.

Starting from 01.04.2016, wholesalers that will be found to sell to end-customers will be subject to penalties amounting to 100% of the VAT.

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

- It is forbidden to keep or use fiscal equipment or sales monitoring systems which differ from the electronic cash registers as determined by the law and its sub-legal acts. Maintenance or usage of such non-compliant equipment or systems will be penalized with seizure of the goods in stock. Furthermore, in that case, the tax administration will preserve the right to charge the taxpayer with criminal offence.
- Every individual or business is entitled to refuse payment if the seller does not issue the fiscal invoice or the fiscal coupon, as requested by the law. On the other hand, all taxpayers are obliged to post a notification in a visible place in the location/address where they carry out their activity, to inform buyers on their right to refuse payment for the goods or services being purchased, in case the taxpayer does not issue the fiscal invoice or the fiscal coupon as required.
- Failure to issue a fiscal invoice or a fiscal coupon will be subject to a penalty of 100% the amount of the underlying non-declared or unpaid tax liabilities (in addition to the same tax liabilities and any related interest).

Correction of tax declarations deliberately filed incorrectly

For taxpayers that willingly declare and correct within 31.12.2015 a tax declaration which they have deliberately filed incorrectly, and pay all related tax liabilities, interest and penalties, the tax administration will not file criminal charges. Taxpayers will benefit from this provision if the committed breach has not yet been identified by the tax administration.

Cancellation of certain liabilities accrued due to the new IT system

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 of forced collection of taxes, the tax administration is entitled to engage personnel to verify and monitor the business of the taxpayer (at its premises) in order to seize, at the end of each day, an amount not less than 50% of the turnover realized for that day, for the purposes of settling the concerned tax liabilities.

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 the outstanding tax liabilities.

Along with other procedures for forced collection of taxes, the tax administration may request to a third party who owes liabilities/trade payables to the concerned taxpayer, to pay such liabilities directly to the tax administration (instead of to the concerned taxpayer) within 30 calendar days of such request.

Database of IMEI numbers of mobile phones

Upon publication of a Decision of the Council of Ministers, the General Tax Directorate will establish a database for the IMEI numbers of mobile phones. Mobile phone importers and sellers should declare and upload the IMEI numbers of all the mobile phones they have in stock 1 month after entry into force of such expected Decision and of all the mobile phones subsequently imported/bought and released for sale.

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.

Conflict of interest

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. In case of conflicts of interest, the officials will be dismissed and will have no right of further employment with the tax administration.

II. Decisions of Council of Ministers for the development of social insurance government databases

The Decisions of Council of Ministers no. 120, 121 and 122, all dated 17.02.2016 and published in the Official Gazette no. 28, dated 24.02.2016, provide for the establishment of 3 electronic state databases:

- Social Contributions Managing System (CMS);
- Archiving and Managing of Seniority and Insurance Period Documentation (DMAIS);
- Benefits Management, Calculation and Payments System (PCAMS).

All of these databases will be administered by the Social Insurance Institute. Other institutions may have access to the databases for reporting and statistical purposes. Individuals may also access some of the databases for information purposes.

III. Instruction for the implementation of the law no. 146/2015, dated 17.12.2015 "On job-seekers"

As anticipated in our Special Tax News on the [Fiscal Package 2016](#)) the Minister of Social Welfare and Youth has approved Instruction no. 4, dated 15.02.2016 and published in the Official Gazette no. 27, dated 22.02.2016, to provide for specific procedures on the registration of job-seekers, their categorization and de-registration.

IV. Notification of General Tax Directorate regarding the calculation of social and health contributions for freelance professionals

The General Tax Directorate has informed (click [here](#) for the full notification in Albanian) that all taxpayers subject to the Decision no. 37, dated 21.01.2016 (please refer to our [Tax News of January 2016](#)):

- Starting from the payroll declaration of January 2016 (inclusive) and onwards, should select the employment category no. 3/011 instead of no. 2/011.
- Should input the correct amount in cell no. 24 of the payroll declaration "Gross Salary for the

calculation of health contributions” (determined based on the above mentioned Decision), as it is not no longer fulfilled automatically by the system.

Taxpayers are invited to correct payroll declarations already submitted without reflecting these requirements.

V. A decision of the Tax Appeal Directorate related to the non-installment of electronic cash register by a freelancer

We have summarized below a decision of the Tax Appeal Directorate (TAD) published in the official website of the tax administration ([click here](#) to read the full text in Albanian) related to the non-installment and non-utilisation by a freelancer of the electronic cash register.

The freelancer that carried out the activity of bookkeeping and personnel administration has been subject to a penalty of 50,000 ALL for failure to install an electronic cash register.

The freelancer has claimed that the obligation to install an electronic cash register does not apply in this case, as all the payments from clients are required and processed only through bank accounts, and not in cash.

After analysing the legal basis and the merits of the case, TAD:

- Has clarified that the legal requirement to install electronic cash registers is addressed only to taxpayers that have receipts *in cash*; and
- Has concluded that the tax administration would be entitled to impose the administrative penalty of 50,000 ALL only if it verified (through inspections or in-depth controls) that the freelancer performed cash transactions.

TAD has finally accepted the appeal and dismissed the penalty.



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