

Albanian Bulletin

DECEMBER 2013

Tax & Legal update Tax & Legal amendments December 2013

The Albanian Parliament has adopted a series of amendments to the existing fiscal legislation as well as introduced new laws in the attempt to support and improve the commercial and business activity in the country. The following Laws and Instructions have been amended or introduced as new:

- Law no. 177/2013 dated 28.12.2013 On some changes on Law no. 8438, dated 28.12.1998, "On income tax", as amended
- Law no. 178/2013 dated 28.12.2013 On some changes and additions on Law no. 9975, dated 28.7.2008, "On national taxes", as amended
- Law no. 179/2013 dated 28.12.2013 On some changes and additions on Law no. 9920, dated 19.5.2008, "On tax procedures in Albania", as amended
- Law no. 180/2013 dated 28.12.2013 On some changes and additions on Law no. 61/2012, "On excise taxes in the Republic of Albania", as amended
- Law no. 181/2013 dated 28.12.2013 On some changes and additions on Law no. 9632, dated 30.10.2006, "On the local tax system", as amended
- Law no. 182/2013 dated 28.12.2013 On some changes and additions on Law no. 7928, dated 27.4.1995, "On value added tax", as amended
- Law no. 183/2013 dated 28 December 2013 "On some changes in Law no. 7811 dated 12 April 1994 "On the ratification with some changes of the Decree no. 782 dated 22 February 2014 "On the tax system in the hydrocarbons' sector (research and development"
- Law no. 184/2013 dated 28.12.2013 On some changes and additions on Law no. 10 383, dated 24.2.2011, "On the obligatory health contributions in Albania", as amended

The above laws enter into force on 01 January 2014, with the exception of one amendment in excise tax law, which is specified below.

- **Law no. 177/2013 dated 28.12.2013 “On some changes of Law no. 8438 on income tax”, dated 28.12,1998, as amended**

Taxable profit

The profit of the taxpayers subject of the local tax on small business with a turnover from 2 to 8 million ALL is not any longer subject of tax on profit of 10%. All the articles referring to the personal income tax and to the year ended declaration for the small business part of the law on income tax are abrogated. It is subject instead of simple tax on profit dealt with by Law no. 9632 “on Local Tax System” (part of this fiscal package).

For year ended 2013 the small business will submit as usual the year ended personal income tax declaration based on the income tax law still in force until 31 December 2013.

Exempted income

The income from the transfer of the property on agricultural land from a register farmer to another physical or legal entity which carries out agricultural business activity are exempted from personal income tax.

Personal income tax on salary and bonuses

The salaries and bonuses , related to the actual work relations will be taxed according to the following table:

The taxable salary (in ALL)	% of personal income tax	
	From	To
0	30.000	0%
30,001	130.000	+ 13% for the amount over ALL 30,000
130,001	Up	13 000 lekë + 23% of the amount over ALL 130,000

The annual individual income declaration

The annual individual income declaration is not any longer subject of a flat rate tax of 10%, but the taxation of each item, depends on the type of income earned by the individual during the financial year.

Rezervat speciale për bankat dhe shoqëritë e sigurimit

The allowed threshold set from the Central Bank of Albania for the amount of the expenses deducted for tax purposes concerning the expenses related to technical reserves created in accordance with the Law “on the activity of the insurance ad reinsurance and intermediary services in the insurance activities” and to the provisions created by banks in accordance with the IAS Board and certified without reserves from the external auditors, in case these expenses exceed such threshold, is omitted.

The percentage of tax on profit

The corporate income tax (tax on profit) increases from 10% to 15% for the financial year 2014 and on.

Withholding tax payments and declaration

The new amendment reemphasizes the necessity to pay the withholding tax on the eligible services as per the law on income tax within date 20 of the next month to the month of the payment of the invoice. The taxpayer should also complete a WHT declaration the format of which will be set based on the new instructions issued for the implementation of the law by the Minister of Finance. Such declaration is deemed to be submitted near the Regional Tax Directorate where the taxpayer is registered, therefore we might assume that such declaration might be a monthly or an annual one.

It also requires that the taxpayer keeps records of the WHT paid for tax purposes.

- **Law no 178/2013 dated 28.12.2013 “On some changes of Law no. 9975 dated 28.7.2008, “On national taxes”, as amended**

The collection of the national taxes

The income from the national taxes collected by the national tax agents will be transferred to the regional tax directorates and the later will transfer them to the state budget. Prior to this amendment the income from the national taxes were transferred directly from the national tax agents to the state budget. We assume that the new change was made in order to make the national tax agents accountable for the correct collection of such taxes under the supervision of the tax authorities, otherwise such amendment cannot have any value.

The type of local taxes

The plastic and glass package is not any longer named as ,on usage package‘, but the definition of ,package‘is provided.

The amount of the national taxes

The tax on gasoil and diesel is 17 ALL/lit.

The tax of the plastic package is 100 ALL/kg and is applied on import as well as on domestic production, whereas in the recycling industry which produces plastic package from the recycling of the plastic waste is equal to 50 ALL/kg, classified as per chapter 39 of the Combined Nomenclature of Goods in force.

b) The tax on the glass package is 10 ALL/kg and is applied on import as well as in the domestic production.

The declaration for the payment of the mineral rent

The physical or juridical entities licensed or acting in the mineral industry in accordance with a contractual agreement with Ministry of Economy are obliged to:

- a) submit a monthly declaration for the payment of the mineral rent calculated on sales made during the previous month, not later than date 15 of the subsequent month,
- b) pay the mineral rent for that month on the date of the submission of the above declaration or prior to that date..

The above stated declaration should have the format set by an instruction issued by the Ministry of Finance in the implementation of the law.

The declaration for the payment of the mineral rent is submitted near the regional tax directorate where the taxpayer – owner of the minerary license or the exporter of the mineral (if carried out by third parties), is registered.

- **Law no. 179/2013 dated 28.12.2013 On some changes on Law no 9920, dated 19.5.2008, “On tax procedures in Albania”, as amended**

The scope of application

This law is applied to the tax system, the national taxes and tariffs, as far as the later are not regulated per law no. 9632, dated 30.10.2006, “On local tax system”, as amended.

The local governance authorities

The local governance authorities (municipalities and communes) do no longer evaluate and collect the simple tax on profit paid by the small business. Such tax is evaluated, collected and controlled by the General Tax Directorate. However they cash in the money collected by the tax authorities and transferred to them by the later, with regard to this tax.

Such definition is not clear because the General Tax Directorate has never been in charge itself for any collection of taxes with the exception of the excise tax which was evaluated and paid in advance near such Directorate.

The file of the fiscal data

It is the task of the General Tax Directorate to create a central data base system for each taxpayer.

De registration of the taxpayer (closure of business)

The National Registration Center or the court are obliged to officially notify the competent tax authority for the commencement of the liquidation proceedings (or closure proceedings without liquidation – as it might be the case for the representative offices) or for the request for the de registration of the physical person at the moment they file their request.

The competent fiscal authority is obliged to verify the fiscal situation of the taxpayer within 30 days from the receipt of the notification as above, and when it deems it necessary to perform an audit near the premises where the taxpayer carries out its business activity, based on a risk analysis procedure.

So far, the closure of business is a very long process and can last almost two years, due to the fact that the tax authorities do not perform the tax audit at all times or they intentionally perform abusive evaluations for the taxpayers never to be able to close their activities. Also the newly introduced term “based on a risk analysis procedure” does not indicate any transparency in the process and leaves the choice of tax audit at the full discretion of the tax authorities. Therefore detailed instruction of what is meant by “risk analysis procedures” with all indicators and relevant calculations should be issued.

Cash transactions

The taxpayers, physical or juridical entities which perform between them cash transactions, are allowed to make such transactions up to the amount of ALL 150,000 (transaction value), otherwise they will be penalized in accordance with the law on tax procedures (10% on each transaction amount exceeding ALL 150,000).

The notification for the the tax evaluation and the request for payment of the tax obligation

In case the taxpayer does not agree in relation to the tax evaluation carried out by the tax authorities, he should appeal within 30 calendar days from the date of receipt of the notification for such evaluation. In case the date of the receipt of the notification cannot be proved with certainty, then as the date of receipt from the taxpayer is considered the day 10 after the date of the delivery by official mail of the notification.

The right to use alternative evaluation methods

The fiscal administration has the right to use alternative evaluation methods of the tax obligation of the taxpayer and to issue the relevant evaluation, in case the taxpayer carries out cash transactions which exceed the amount of ALL 150,000.

VAT reimbursement and the compensation of the tax obligations

In case the taxpayers registered for VAT result on VAT to be riumbrsed they submit a VAT reimbursement request to the regional tax directorate where they are registered, in accordance to the requirements of the law on VAT, and the tax authorities are obliged to verify the accuracy of such request and to notify the taxpayer and complete the reimbursement when the conditions are met, within a period of 60 days after the submission of the VAT reimbursement request from the taxpayer. In contrary case (i.e. in case of non compliance from the tax authorities with their obligation within the said period) the taxpayer has the right to compensate future tax payments with the VAT amount requested to be reimbursed.

The tax audit report

The taxpayer has the right to appeal the results of the tax audit within 15 calendar days after the date the tax audit report is deemed to be received by the taxpayer as above stated. This period refers not to the appeal period of 30 days which is subsequent to this first appeal related to the observation to the audit report. In the old law such period was set at 5 days after the receipt of the report from the taxpayer.

According to our opinion the 5 days period was enough to prepare the observation on the report, as far as the exention of such period extend the whole period related to the administrative appeal before going to the court (15+30+90+30 = 165 days of administrative appeal, including claims of the taxpayer and answers from the tax authorities).

The blocking order on the taxpayer's bank accountst

Unless differently provided by the law, in case over the bank account of the taxpayer are pending other debit execution orders, the blocking order issued by the tax authorities will be executed as per the order stated by article 605 of the Law no. 7850 dated 29.07.1994 of "the Civil Code of the Republic of Albania", as amended.

The payment of the tax obligation subject of appeal

The taxpayer prior to submitting the appeal to the tax audit report has now two possibilities:

- either pay the tax obligations as per the evaluation notification issued based on the tax audit report,
- or place a bank guarantee for the full amount of the tax obligations based evaluation notification.

Extension of status of limitations

The status of limitation can be extended based on the procedures to be followed as per the provisions of the Code of the Administrative Procedures. The Directorate of Appeal publishes on the website of the General Tax Directorate the decisions taken in these cases.

Reimbursement of the tax obligation, payment of the interest and penalty

In case the decision of the directorate of appeal is issued in favor of the taxpayer and the tax administration admits such decision (!!), the tax obligation paid in excess as well as the interest calculated from the date of the payment of the tax obligation up to the date of the reimbursement of such tax obligation to the taxpayer; is reimbursed to the taxpayer within 30 days from the date the decision of the appeal directorate has been taken or deemed to be taken.

The change of the tax declaration

In case the taxpayer voluntarily changes a tax declaration it will not be subject of penalties for that, in case such change entails additional tax obligations due for payment.

The punishment for the tax agents collecting withholding tax, tariffs and fees

In case the tax agent obliged to keep and pay the WHT, or the tax agent who is obliged to collect and transfer to the state budget of the tariffs and fees collected, or avoids their collection, is obliged to pay a penalty of 50% of the amount of the non collected amount of the WHT, tariffs and fees.

- **Law no. 180/2013 dated 28.12.2013 On some changes and additions of Law no. 61/2012, “On excise taxes in the Republic of Albania”, as amended**

Exemption cases

It is no longer exempted from the excise tax the import of fuel and its subproducts for their own needs, from the taxpayers engaged in the activity of research and development of the hydrocarbons. Such imported fuel will be subject of excise tax commencing from date of 01 April 2014.

Penalties

The new amendments provide for higher penalties in case of the production or sale of the cigarettes, coffee or energy drinks without excise taxes. The goods are confiscated and destroyed.

Excise tax evaluations on crude oil

In case for the purpose of the calculation of the excise tax it is verified excess or lack of crude oil amounts in the warehouse used for production or storage of the crude oil, the level of the excise tax imposed for penalization purposes in this case would be equal to 25 lek/kg. The same excise value is applied when irregularities are verified during the transportation of the crude oil.

Excess or lack of crude oil in the areas of the receiver of the crude oil

The lack over 2% in the amount of the crude oil, in addition to the allowed losses, as verified during the tax audit in the area of the registered receivers of the crude oil, are considered administrative offences and are penalized at ALL 100,000.

In case during the tax audit excess amounts are verified in comparison to the in and out register, and in case such excess amount does not exceed 2 per cent of the reported amount, the receiver of the product is penalized at ALL 100,000. In case such excess exceeds the 2 per cent and has no justifying documentation, the penalty is equal at twice the amount of the fiscal obligations due, but in any case not less than ALL 200,000 (dyqind mijë). In case of a repetitive offence the penalty increases progressively.

Change (increase) of excise taxes

The amended law increases the excises taxes for the fuel, coffee and alcoholic drinks with the new excise taxes as per the annex attached to it.

- **Law no. 181/2013 dated 28.12.2013 On some changes and additions on Law no. 9632, dated 30.10.2006, “On the local taxes system”, as amended”**

Type of the local taxes

The local tax on the small business will be named the simplified profit tax on the small business.

The simple profit tax on the small business

The simple profit tax is applied on the annual profit of taxpayers, which generate an annual income equal to or lower than 8 million per year, known as a small business.

The percentage of such tax is equal to 7,5% on the profit for an annual turnover from 2 million to 8 million ALL and at a fixed amount of ALL 25,000 for an annual turnover lower than ALL 2 million.

The deductible and non deductible expenses for tax purposes are treated the same as those incurred by taxpayers whose annual turnover is higher than ALL 8 million (known as big businesses, subject of corporate income tax).

The simple tax on profit of 7.5% is paid in four installments during the current financial year, whereas the amount of ALL 25,000 is paid within the first half of the current financial year.

Upon the payment of each installment the taxpayer should be presented near the office for the service of the taxpayer in order to get the 'stamp for the payment of the tax' against submission of the bank payment. Upon the finalization of such procedure the taxpayer sticks the stamps on its NUIS registration at an easy spotted place in its business, for tax audit purposes. According to our opinion such procedure prolongs the administrative time required for tax compliance from the part of the taxpayer. The payment at the bank of the simple tax on profit installment based on a tax declaration form should be sufficient for compliance.

The annual tax return and additional statements

The annual tax return is prepared and submitted from the small business'taxpayers within date 10 February of the subsequent year. A detailed instruction on such declaration and any other required statements to be submitted will be issued by the Ministry of Finance for the implementation of this provision.

The General Tax Directorate transfers collected simple profit tax in the account of the local governance authorities within date 10 of the subsequent month to the month of the collection of such tax. According to our opinion this is a burocratic procedure which prolongs the administrative time for tax collection and distribution and which will show unjust higher collections from part of the tax authorities when in reality such collected income from taxes belongs to the local governance authorities, which should have been able to collect and administer such taxes themselves, as they did in the past, and also be accountable for failure of collection.

The tax on buildings

The taxpayers who own more than one premises, for the house they live in as their habitual residence pay the tax on the buildings as per the anex 1 attached to this law, whereas for each additional home/office the building tax is twice the amount of the building tax applicable in the area where the additional home/office is located. In order to collect the building taxes the commune and municipality authorites will collaborate with the mortgage offices.

Annex 1

	Bashkitë		
	Zona 1 Tiranë Durrës	Zona 2 Vlorë Fier Sarandë Pogradec Korçë Elbasan Berat Lushnjë Gjirokastrë Shkodër Kavajë Lezhë	Zona 3 Të gjitha bashkitë e tjera
Lekë/m² në vit			
I. Ndërtesa banimi			
- ndërtuar para 1993	15	10	5
- ndërtuar gjatë dhe pas 1993	30	12	6
II. Ndërtesa të tjera			
- Për tregti dhe shërbime	400	300	200
- Të tjera	100	60	40
III. Ndërtesa në pronësi apo në përdorim, në territore të miratuara si fshatra turistike.	400	400	400

- Law no. 182/2013 dated 28.12.2013 On some changes and additions on Law no. 7928, dated 27.4.1995, "On VAT", as amended

VAT exempted supplies

Hydrocarbons operations

The supply of the services carried out by the contractors and their subcontractors engaged in hydrocarbons operations, verified as such from Agency of the Natural Resources, in relation to the research phase of the hydrocarbons operations are exempted from VAT on sales. The Minister of Finance and the Minister responsible for the Energy issue a common instruction for the specification of the list of services related to the

research phase of the hydrocarbons operations and the procedure of VAT exemption to be followed. The issuance of such Instruction is very urgent as the Law has already entered in force since January 1, 2014 for the reasons connected to the following paragraph.

The above legal changes mean that the phase of development in hydrocarbons operations is no longer exempt from VAT, hence taxpayers engaged in this phase of the hydrocarbons operations should issue their sales invoices with VAT, starting from the month of January 2014. Therefore a clear distinction should be made between the research and the development phase.

Drugs and health services

Starting from date 01 April 2014 the supply of the drugs and of the medical services from the private and public health institutions is VAT exempted. An instruction issued by the Ministry of Finance will regulate the drugs inventory resulting on date 01 April 2014..

Exempt supplies on import

The import of goods and services related to the phase of research in the hydrocarbons operations is exempted from VAT. The Minister of Finance and the Minister responsible for the Energy issue a common instruction for the specification of the list of services related to the research phase of the hydrocarbons operations and the procedure of VAT exemption to be followed.

The above legal changes mean that the import of goods and services related to the phase of development in the hydrocarbons operations is no longer exempted from VAT. Therefore a clear distinction should be made between the research and the development phase.

VAT reimbursement procedure

When based on the financial agreements ratified from the parliament or on the grant agreements approved by the Council of Ministers, it is foreseen the non usage of the foreign financial funding for payment of taxes and tariffs, including or not the VAT payment; in the event of any VAT payment, such VAT amount is reimbursed to the foreign funders within 30 days from the payment, in accordance of the regulations issued by the Ministry of Finance.

As far as the VAT reimbursement for the Albanian tax resident taxpayers is concerned, the procedure for the VAT reimbursed should be finalized by the regional tax authorities, within a period of 60 days from the submission of the request from the taxpayer for the VAT reimbursement based on the conditions provided by the VAT law.

- **Law no. 183/2013 dated 28 December 2013 “On some changes in Law no. 7811 dated 12 April 1994 “On the ratification with some changes of the Decrete no. 782 dated 22 February 2014 “On the tax system in the hydrocarbons’ sector (research and and development”**

Article 4 of the Decrete is not in force commencing from date 01 January 2014, which means that the field foreign workers engaged in the hydrocarbons business of research and development, are no longer exempted from the personal income tax on their salary and bonuses they receive for their work in Albania as part of the

monthly payroll of the Albanian tax resident companies engaged in the hydrocarbons business of research and development.

- **Law no. 184/2013 dated 28.12.2013 On some changes and additions to the Law no. 10383 dated 24.2.2011, "On the obligatory health contributions in the Republic of Albania", as amended**

The basis for the calculation of the health contribution

The basis for the calculation of the health contribution for the employee is his gross salary. Based on such change the social and health contributions on the salary of the employee are calculated as follows:

- Employee's share: 9.5% calculated on the maximum salary of ALL 95,130 and 1.7% calculated on the gross salary (total – 11.2%)
- Employer's share: 15% calculated on the maximum salary of ALL 95,130 and 1.7% calculated on the gross salary (total – 16.7%)

The basis for the calculation of the health contribution for the self employed and for the voluntary payment of social and health contributions, is the double of the minimum salary used for the calculation of social and health contributions; whereas the basis of calculation of the health contribution, in case the voluntary payment of social and health contributions.

The health services not covered by the obligatory health contribution

The uninsured individual is not covered by the obligatory social insurance fund with the exception of the case of emergency health situations.

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