

# Albanian Bulletin

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August 2014

## **Tax & Legal update** **Tax & Legal amendments January – August 2014**

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. 173/2013 “On the ratification of the Agreement on the Avoidance of Double Taxation and the preventions of the fiscal evasion for the income tax and capital, entered into between the Republic of Albania and the United Kingdom”
- Instruction no. 4 dated 25 January 2014 on some changes in Instruction no. 24 dated 02 September 2008 “On tax procedures in Albania”, as amended
- Instruction no. 2 dated 17 January 2014 on some changes in Instruction no. 26 dated 04 September 2008 “On the national taxes in Albania”, as amended
- Joint Instruction (Ministry of Energy and Ministry of Finance) no. 673/2 dated 28 January 2014 “On the approval of the list of goods and services subject to the VAT exemption when used for the research operations in the hydrocarbon activities and the exemption procedures thereto”
- Instruction no. 6 dated 27 February 2014 on some changes in Instruction no. 17 dated 13 May 2008 “On VAT”, as amended
- Instruction no. 6/1 dated 17 March 2014 on some changes in Instruction no. 17 dated 13 May 2008 “On VAT”, as amended
- Instruction no. 6/3 dated 08 April 2014 on some changes in Instruction no. 17 dated 13 May 2009 “On VAT”, as amended
- Law no. 32/2014 on some changes in Law no. 8438 dated 28.12.1998 “On income tax”, as amended
- Law no. 42/2014 on some changes in Law no. 8438 dated 28.12.1998 “On income tax”, as amended
- Law no. 43/2014 on some changes in Law no.9920 dated 19 May 2008 “On tax procedures in Albania”, as amended
- Law no. 48/2014 “On the delayed payments as per contractual and commercial obligations”
- Decision no. 261 dated 07 May 2014 on some changes in Decision no. 205 dated 13 April 1999 “On customs dispositions of the Customs Code”, as amended

- Instruction no. 14 dated 23 May 2014 on some changes in Instruction on. 5 dated 03 January 2006 “On income tax”, as amended
- Instruction 309 dated 03 June 2014 “On the registration of the titles near the “Qendra e Regjistrimit te aksioneve” sha (the Center for the Registration of Titles)”
- Decision no. 457 dated 09 July 2014 “On the obligatory collection of social contributions in Albania”
- Instructon no. 2 dated 06 August 2014 “On the minimum cost of construction of the buildings for year 2014”
- Law no. 83/2014 on some changes in Law no. 8438 dated 28.12.1998 “On income tax”, as amended
- Law no. 84/2014 on some changes in Law no. 9920 dated 19.05.2008 “On tax procedures in Albania”, as amended
- Law no. 85/2014 on some changes in Law no. 9632 dated 30.10.2006 “On the local taxes” , as amended
- Law no. 86/2014 on some changes in Law no. 9975 dated 28.07.2008 “On the national taxes”, as amended
- Law no. 87/2014 on some changes in Law no. 9136 dated 11.09.2003 “On the obligatory collection of the social and health contributions in Albania”, as amended
- Law no. 90/2014 on some changes in Law no. 10171, dated 22.10.2009 “On the regulated professions in Albania, as amended
- Law no. 92/2014 “On VAT in Albania”

The purpose of this Bulletin is to summarize the above changes to tax legislation.

Please be advised that this summary is not intended to be exhaustive for its users but due to the high number of changes and also to the ongoing changes in the tax and related legislation you would find in this edition a series of new laws introduced and amended, which all need appropriate attention from your part.

## **Law no. 173/2013 - Double taxation avoidance agreement with United Kingdom**

A new double taxation avoidance agreement entered into force on 01 January 2014 between the Republic of Albania and United Kingdom

## **Instruction no. 4 dated 25 January 2014 “On some changes in Instruction no. 24 dated 02 September 2008 “On tax procedures in Albania”, as amended**

### *The business closure procedures*

The Regional Tax Directorate of the relevant jurisdiction, within 30 days from taking the notification from the National Registration Center for the commencement of the de registration (closure) procedures from the taxpayer, verifies the fiscal situation of such taxpayer up to the moment for application for closure near the National Registration Center or near the court for the non for profit organizations, foundations and for the other public entities. In case it considers it necessary, based on a risk analysis procedure, the tax administration performs a tax audit in the premises where the taxpayer carries out its business activity.

### *Changes in registration*

In case the turnover of the taxpayer increases higher than ALL 8 million during the year, when the taxpayer is declared as small business, he has the obligation to declare that he overcame such turnover within 15 days from the ending of the first months when the turnover was overcome.

### *The fiscal invoice*

It is considered to be a fiscal invoice: the VAT invoice issued by the taxpayers subject of VAT or subjects of tax on profit, and the simple tax invoice issued by taxable persons subjects of simple tax on profit – small business as well as by the non for profit organizations, the foundations, the public institutions, etc.

### *Payments in cash*

The taxable persons who carry out transactions in cash, the amount of which is higher than ALL 150,000, are subject of a penalty at 10% on the amount of each transaction. The penalty is imposed both on the buyer and on the seller.

### *The tax audit report*

The taxpayer subject of an audit report has the right to submit its observation to the tax authorities on the draft/technical audit report within 15 calendar days after the date when the report is deemed as received by the taxpayer.

### *The tax administrative appeal*

With exception of the appeal made by the taxpayer against the blocking order on its bank accounts issued by the tax administration, the other administrative measures which refer to measures of enforced collection of tax obligations are not subject of appeal to the Fiscal Appeal Directorate.

### *Reimbursement of the guarantee*

In case the taxpayer has presented a guarantee for the payment of its tax obligation when submitting a tax appeal, this guarantee is partially or totally released in accordance to the decision of the Appeal Directorate, within 30 days from the date when such decision is deemed as taken by the Directorate.

### *The change of the tax declaration*

There is no penalty in case of changing the tax declaration based on self evaluation of such declaration.

### *Penalties for the withholding tax agents*

In case of failure of keeping into source and payment of, reporting or transferring to the state budget of the withholding tax, of the tariffs and taxes collected, from part of the agents in charge to collect such taxes, they are subject of a penalty at 50 per cent of the amount of the non collected tax.

### **Instruction no. 2 dated 17 January 2014 on some amendments to instruction no. 26 dated 04 September 2008 “On national taxes”, as amended**

### *The circulation tax for the gasoil and diesel*

The circulation tax is at ALL 17/lt for the diesel and Taksa e qarkullimit mbi benzinën dhe gazoilin caktohet në masën 17 lekë/litër për benzinën dhe 17 lekë/litër për gazoilin.

### *Mineral rent*

When the owner of the exploitation permit sells for final consumption within the country the mineral or the subproduct produced by it, he pays the tax of the mineral rent near the second level banks for the account of the regional tax directorate where he is registered for the total amount sold, not later than date 15 of the subsequent month.

**Joint Instruction (Ministry of Energy and Ministry of Finance) no. 673/2 dated 28 January 2014 “On the approval of the list of goods and services subject to the VAT exemption when used for the research operations in the hydrocarbon activities and the exemption procedures therein”**

The supply of the services and the import of goods related to the research phase in hydrocarbon activities from the contractors and their subcontractors, is exempted from VAT.

The instruction specifies the list of the goods and services subject of VAT exemption as above.

The exemption is not provided for the supply of goods and services which are not directly related to the research operations, such as: internet, phone, accomodation, legal and financial consultancy services, construction of own offices, transport, insurance, physical security services, etc.

**Instruction no. 6 dated 27 February 2014 on some changes in Instruction no. 17 dated 13 May 2008 “On VAT”, as amended**

*VAT reimbursement*

The term (30 days for the classified exporters and 60 days for the rest of the taxpayers) for the reimbursement of the VAT starts from the date of protocoling the request for VAT reimbursement by the taxpayer in the Regional Tax Directorate, date which coincides with the date of the presentation or arrival of the VAT request for reimbursement through the official mail service (rekomande – with confirmation signature from the Receiver, i.e. the Protocol Office at the Regional Tax Directorate).

Every taxpayer who meets the conditions stated in the law to get the VAT reimbursement has the right to ask for it. In order to obtain the VAT reimbursement, the taxpayer, upon filling in the relevant box “Request for VAT reimbursement” of the latest monthly VAT declaration, submits to the Regional Tax Directorate the following documentation:

a) A written request with the subject “Request for VAT reimbursement”, in which are specified: (i) the tax indentifying data of the taxpayer, the name of the administrator (s), the correct address of the activity (ii) the bank and the bank account of the taxpayer (iii) a short description of the activity and the reasons of accumulating this VAT to be reimbursed and the period during which such VAT amount on credit was accumulated (iv) whether this is the first request for VAT reimbursement (v) statement that the taxpayer is an exporter if applicable;

b) The completed form of the “Request for reimbursement” as per the model specified by the Law.

The Instruction defines further in details the reimbursement procedure for the exporters and other taxpayers.

**Instruction 6/1 dated 17 March 2014 on some changes in Instruction no. 17 dated 13 May 2008 "On VAT", as amended**

*The supply of drugs (medicines for humans and animals) and health services*

The supply of drugs (for humans and animals) and of health services rendered by public or private owned health institutions (for therapeutical and hospitalization reasons as well) are exempted from VAT.

**Law no. 32/2014 "On income tax"**

In case of the second level domestic or foreign capital owned banks, the branches of the foreign banks, the financial institutions non - banks licensed by the National Bank of Albania to carry out the lending activity; the omission from the books of the bad debt related to the bad loans portfolio, is recognized as a deductible expense for the purpose of calculating the obligation of tax on profit/corporate income tax upon expiration of the following deadlines:

- a) 365 days after the initiation of the procedure for the obligatory execution from the bailiff, in case the loan is secured with movable or immovable property,
- b) 365 days after the issuance from the court of the execution order, in case the loan is not secured as above.

**Instruction 6/3 dated 08 April 2014 "On VAT"**

The VAT on the purchase of fuel, with exception of the case when it is purchased for resale, is non deductible. The case of the usage for the technological purposes and the procedure to apply to take the right for deduction is no longer in force.

The special cases of deducting the VAT on fuel as a percentage to the total annual turnover and per the type of activity are changed as follows:

" I. Construction

- a) Production of construction materials: up to 33%;
- b) Construction and asphaltting of roads: up to 32%;
- c) Construction of buildings and other works: up to 8%;
- ç) Production of concrete: up to 14%;
- d) Digging/drilling: up to 25%;
- dh) Production of bricks: up to 33%.

II. Transport

- a) Transport of travelers: up to 43%;
- b) Transport of goods: up to 38%;
- c) Transport of goods by technological means: up to 78%.

### III. Services

- a) Auto schools: up to 25%;
- b) City cleaning services: up to 30%;
- c) Fishing: up to 10%.

III. Commerce: up to 3%

IV. Others (not listed above): up to 2%

The burden of the proof for the purpose of using the fuel (for the business activity audited) lies on the taxpayer.

### **Law no. 42/2014 „On income tax“**

The amendments to the Law on Income tax introduced new Transfer Pricing Regulations based on the OECD Guidelines for Multinational Enterprises and Tax Administration (2010). The provisions will have direct effect for every entity that engages in one or more transactions with related/associated parties or else for every associated parties which enter into cross boarder controlled transactions.

The law defines the terminology of “associated parties”, the transfer pricing transactions as non in compliance with the market principle of ‘at arm’s length’ transactions, the method used by the tax authorities to reevaluate the transfer pricing events (i.e. the transactions occurring between related parties named as ‘controlled transactions”).

It is required that the taxpayers involved in such transactions are obliged to complete a form and to notify on annual basis the tax authorities about the controlled transactions as per the senses of this Law. The form and the deadline for the submission will be provided by a relevant Instruction issued by the Minister of Finance.

The law introduces the “Advance Pricing Agreement” as a preventive measure to help the taxpayer to declare prior to a potential tax audit or other requests from the tax authorities related to the transfer pricing issues, his controlled transactions with related parties and to agree with the tax authorities on a set of acceptable criteria which constitute the conditions to evaluate and accept such transactions occurring during a defined period of time. In such case no revaluation occurs by the tax authorities in case of a tax audit for the controlled transactions included in the agreement.

#### **Law no. 43/2014 “On tax procedures in Albania”**

In case of failure to submit the annual notification for the controlled transactions (transfer pricing) within the deadline (to be defined by the relevant instruction), the taxpayer is subject of a penalty equal to ALL 10,000 for each month of delay.

When the taxpayer as a result of a revaluation of the controlled transactions from the tax authorities results in additional tax obligations to be paid, the taxpayer is penalized for the delayed payment of tax obligations. However, in case such revaluations occurred after the taxpayer has notified its controlled transactions as above, he will be obliged to pay only the additional tax obligation resulting from the tax audit along with the calculated interests, but not the related penalty.

#### **Law no. 48/2014 “On the delayed payments as per contractual and commercial obligations”**

The law defines the terms based on which an obligation to be paid by the debtor to the creditor as per contract or per law is delayed and that the relevant obligation, in case the goods or services are delivered by the creditor and are not refused by the debtor, constitutes an executive title and as such can be directly executed by the bailiff based on the provisions of the Code of the Civil Procedure.

#### **Decision no. 261 dated 07 May 2014 “On the customs dispositions”**

The goods of insignificant value are considered the goods which amount at a value of ALL 20,000 for each import. This means that the individuals are exempted from payment of import duties in case they purchase goods from imports which total value does not exceed the amount of ALL 20,000 per import.

#### **Instruction no. 14 dated 23 May 2014 on some changes in Instruction on. 5 dated 03 January 2006 “On income tax”, as amended**

##### *Personal income tax on other income*

The income of the individuals in the quality of owners/shareholders of companies deriving from the distribution of profit or of dividends, are subject of personal income tax of 10%; whereas the net business profit after tax of a small business owner – individual it is not subject of further taxation.

The income generated from the sale of an agricultural land from a registered farmer to a physical or juridical person who will use it for the purpose of agricultural activities, is exempted from personal income tax.

### *Personal income tax on salaries*

The PIT on salaries is changed as per the table below:

| Taxable salary<br>(in ALL) |         | Percentage taxed                                 |
|----------------------------|---------|--|
| From                       | To      |  |
| 0                          | 30.000  | 0  |
| 30.001                     | 130.000 | + 13 % on the amount over ALL 30.000             |
| 130.001                    | and up  | ALL 13.000 + 23 % on the amount over ALL 130.000 |

### *Provisions*

When the provisions created in accounting during the financial year and considered as non deductible for tax purposes are retaken, the income created from retaking the provisions is considered not subject of taxation or as a deductible expense.

### *Non deductible expenses*

The expenses occurred for purchase of foreign services as per the invoice issued by the foreign supplier are considered to be non deductible for tax purposes in case the withholding tax on such invoices is not paid within the year. In case such services are subject of double taxation avoidance agreements then the provisions of such agreements will prevail concerning the paying of the WHT within the year end.

### *Allowances*

With the term "allowances" it is understood the expenses incurred for food and for the amount spent within the limits specified by this law, no justifying documentation is required for tax purposes.

### *The evidence of the withholding tax*

Every taxpayer should keep notes on the withholding taxes calculated on monthly basis, if applicable, concerning the reason, the supplier, the invoice, and the amount of the WHT held.

The monthly calculated WHT at 10% is paid within date 20 of the subsequent month, with the exception of months of July and December of each year, when the WHT calculated for these months, is declared and paid within date July 31 and December 31 respectively.

The taxpayers are obliged to complete a form of declaration and payment of the WHT, form which based on a Technical Decision of the General Director of the General Tax Directorate should be submitted on monthly basis near the relevant Regional Tax Directorate commencing from month of July 2014 by official mail, until month of October 2014, when it is expected that such declaration would be submitted online.

**Instruction 309 dated 03 June 2014 “On the registration of the titles near the “Qendra e Regjistrimit te aksioneve”, sha”**

The joint stock companies, before registering any changes near the National Registration Center with regard to the transfer of the shares, the registered capital, the number of the shares and/or the share nominal value; have the obligation to submit such changes near the Center “Qendra e Regjistrimit te Aksioneve” (The center for the registration of shares) sha,

In the case of share transfer, the joint stock company should notify the Center also about the total number and the list of the existing shareholders along with the year ended financial statements and the related audit report.

**Decision of Council of Ministers no. 457 dated 09 July 2014 “On the obligatory collection of the social and health contributions”**

The minimum and maximum salary for the monthly calculation of social contributions is equal to ALL 19,406 and ALL 97,030 respectively, commencing from date 01 August 2014. The health contributions remain at 3.4% on the gross salary of the employees.

**Instruction no. 2 dated 06 August 2014 “On the minimum construction cost of the buildings for year 2014”**

The minimum cost of construction for the buildings (apartments) for year 2014 at national level is equal to ALL 39,482

**Law no. 83/2014 On income tax**

*Tax on profit/CIT prepayments*

The CIT prepayments might be done also on quarterly basis within date 30 of the month ending the quarter, or on monthly basis not later than date 15 of each month.

The tax on profit for the first three months of the current year is calculated by taking into account the tax on profit paid two years ago divided by 15; whereas the tax on profit prepaid for the remaining nine months of the current year is calculated based on the tax on profit paid for the previous year divided by 12.

*Exemptions from tax on profit prepayments*

In case the taxpayer is carrying out production activity he is exempted from the prepayment of the tax on profit for the first six months of the commencement of its activity or for the rest of the year when it started his activity if such period is shorter than six months.

*Tax on dividend*

The tax on dividend is paid within date 20 August of the subsequent year to the closed financial year, despite of the fact whether the distribution of the dividend is made or not.

#### **Law no. 84/2014 on Tax Procedures in Albania**

The taxpayer may receive the notifications, evaluations and other official communications from the tax authorities also by electronic means. The decision to receive such communication either by official mail or electronically is made by the taxpayer, and will be regulated by the relevant Instruction.

The correspondence is considered received by the taxpayer within ten calendar days from the date of sending of the electronic email or official mail.

The prolongation of the deadline with 30 days of the submission of a tax declaration is not in force any longer (article 66 of the law is abrogated).

The new law introduces a reminder letter sent to the taxpayer by the tax authorities within five days after the date when the taxpayer was obliged to submit a tax declaration. In case the taxpayer does not comply with the request, the tax authorities issue a notification of evaluation for the unsubmitted tax declaration within ten days after the issuance of the reminder letter. Such notification cannot be appealed by the taxpayer but can be totally omitted by the tax authorities once the taxpayer presents the submitted tax declaration.

As an unpaid tax obligation is considered not only the difference between the tax obligation due for payment and the tax obligation already paid, but also the decrease of the amount of the VAT on credit of the taxpayer, in case of a tax revaluation from the tax authorities during a tax audit.

#### **Law no. 85/2014 On Local Taxes**

The tax on profit on the profit of the small business taxpayers with a turnover from 2 million to 8 million is applied at 7.5% but not lower than ALL 25,000 per year, whereas for the taxpayers with a turnover from 0 to 2 million is equal to ALL 25,000 per year. The payment can be made also near the branches of the Post Office.

The taxpayer subject of the simple tax on profit of 7.5% is obliged to submit an annual tax on profit declaration and also a financial statement to be issued by the relevant Instruction of the Ministry of Finance, within February 10, of the subsequent year to the closed financial year.

#### **Law no. 86/2014 On National Taxes**

The national taxes and tariffs are now declared, based on the relevant declaration to be specified by the Instruction to be issued by the Ministry of Finance, near the tax authorities as per the provisions of the Law no. 9920 "On tax procedures in Albania".

#### **Law no. 87/2014 On obligatory collection of social and health contributions**

The declaration of employees for the purpose of calculation of social and health contributions on the monthly payroll, which are submitted electronically to the tax authorities, will serve also for use by the Labor Inspectorate which will get them by the tax administration office by electronic means.

**Law no. 92/2014 On VAT**

The new law clarifies some points on the fiscal treatment of:

- the non for profit organization which are not subject of this law when they get membership fees or donations and they issue simple fiscal invoice and not a VAT invoice, unless they receive payment as a result of carrying out an economic activity
- the type of taxable activities subject to VAT
- the distortion of competition from non taxable services which in that case become subject of VAT accordingly
- services subject to VAT (the transactions with stocks, bonds etc; services supplied by a taxpayer who acts on his behalf but for the account of a third party, transfer of the activity, place of rendering the service)
- the price discounts and reimbursement of expenditures incurred for the account of clients, which have considered as not part of the VAT invoice, i.e. not subject of VAT charge
- the activities of general public interest which are exempted from VAT
- debit and credit note which are taken into consideration if used in relation to a certain VAT invoice
- special regimes for the sale of used goods, the art work, collectionists and artifacts
- the activity carried out by the travel agents
- the compensation scheme for the agricultural producers

The above law enters in force on 01 January 2015 with the exception of the application of the compensation scheme for the agricultural producers, which enters into force 15 days after the publication in the Official Gazette.

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