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On 1 January 2015 entered into force the new law on VAT (Law no. 92/2014 “On Value Added Tax in the Republic of Albania”), which is partially aligned with the Directive of the European Parliament and Council 2006/112/EC, dated 28 November 2006: “On the Common System of Value Added Tax”. The previous Law on VAT provided VAT exemption of the following services: “transactions concerning credits, loans, credit guarantees and any other guarantee over money, including loan, credit or guarantees management, bank accounts, payments, transfers, debts, cheques and negotiable instruments, except debt collection, and transactions concerning coin, banknote and money used as legal tender, except items used only for collections etc.”

Similarly, the article 53 (ç) and (d) of the new law prescribes the following VAT exempts: transactions, including negotiation, concerning exchange operations, deposit accounts, current accounts, the supply of

VAT on financial services

A case to be reconsidered



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liquidity through payments, transfers, debt relations, cheques and other negotiable instruments, except debt collections; and transactions, including negotiations related to the currency, banknotes or other currency used as legal tender, except collectors' coins and banknotes, that is to say, gold, silver, or other metal coins or banknotes no longer used. From the category of the above listed services, it results that the new law has expanded the range of exempted transactions, as a consequence of recent developments in the financial market; but essentially the legal framework remains the same. Generally, the services provided by banks and financial institutions are VAT exempt ones.

The Instruction of the Minister of Finance (Instruction no. 6, date 30.01.2015 “On the Value Added Tax in the Republic of Albania”), released for implementation of the Law on VAT, has set forth additional explanations on exemption of financial services. According to the Instruction, certain services are subject to VAT, although they are provided from financial institutions. It is worth mentioning that unlike the law, the Instruction seems to restrict the exemption on the basis of the status of the service provider. Typically, in its article 41, first paragraph, the Instruction states that: the service provider is required to be a financial institution, which is created and licensed by

the competent authority in the Republic of Albania and is permitted by law to carry out these transactions.

Such restriction would go beyond the



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prescriptions imposed by the law, which refers to the service provider as a lender (in letters b and c), rather than a financial institution, let alone licensed in Albania. Financial transactions are far wider than those occurring between, or that are supplied by, licensed institutions. A literal reading of this provision creates the impression that loans or debts granted between commercial companies or individuals constitute a VAT taxable transaction, or a loan taken out by



a company, even from a financial institution not licensed in Albania, is a taxable transaction in the country.

Referring to article 41, paragraph 4 of the Instruction, and to the subsequent example it is clear that the reference to the financial institution in fact intends to clarify the taxability of the intermediary, in case of lending. Thus, it becomes necessary a change to the aforementioned Instruction, keeping in mind firstly, the need for clarification on more specific cases which occur randomly in Albania, and secondly, a reference correction for financial institutions licensed in Albania (by using the term “lender”, as foreseen in the law).

So far, a more extensive list of financial services has been outlined through a letter, issued by the Minister of Finance in 2009; which prescribed services rendered from specific operators (SWIFT, Reuters, MasterCard, Visa, etc.), closely connected to what is offered to bank’s clients, as falling within the category of financial services and as such non-taxable ones, thus reducing the VAT cost for beneficiaries of these services. In fact, such classification pertained to a series of services connected inextricably with supplies offered to banks’ clients. These services are not limited only to the technical part of the transaction; instead they become part of the financial transaction and assume a greater financial responsibility, in regard



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to the security, authenticity and accuracy of the transmission of financial information. In addition, they guarantee financial transfers, and as such cannot be considered as simple technical services.

On the other hand, it is important to assess the effects the potential taxability of

these services might have on the banking system in Albania. Despite the definition, in essence, the value added tax is a tax on the final consumption of goods and services, and as such, businesses should not bear, or have additional costs from this tax. Consequently, persons/businesses considered exempted in reality pay VAT (the same as a final customer) and those who are taxable persons in reality bear no costs from VAT. Banks constitute a typical case of persons that pay VAT as final customers, since they are not allowed to deduct the VAT paid on their purchases.

VAT EXEMPTIONS, AN IMPORTANT PART OF THE WAY VAT IS APPLIED

In principle, VAT exemptions are categorized in two groups: (i) advantageous exemptions, e.g. donations, sponsoring, health/medicinal supplies, educational services, cultural activities etc., and (ii) technical exemptions, which include: real estate supply, financial and security services.

The first group includes activities of public interest, so these exemptions can achieve social objectives and ensure the distribution of wealth, i.e. to have an impact in reducing VAT “regressive effects on supplies” value and, in the same time, to increase the consumption of these products and services (e.g. sports, cultural or educational activities). The second group includes such activities which in their very nature are difficult to fit into the VAT system. In this context, despite the fact that financial services are included in the second group, a particular attention should be directed towards the actual situation in which such services are offered in Albania.

Albania is in a not-so-favorable situation, regarding the use of banking institutions for domestic and foreign transfers, use of debit or credit cards, online or mobile payment services, as well as for money circulation, outside the system. The benefits the society will have from the expansion of the user base of these services are quite clear; but it is crystal-clear fact that this cannot be achieved with the endeavors by the banking system, only.

So, although the exemption of financial services has been considered as a case of technical exemptions, under present conditions, the exemption of financial services should be considered as of a public interest and social benefits. Reducing the tax burden for new, innovative services and incentivizing them in every possible way should be part of the fiscal package.