

Dear reader,

In this issue, we have reported recent developments to Albanian legal framework on Concessions and Social and Health Contributions and to the Kosovo legal framework on VAT system.

Under the editorial “Article” we have presented to you an overview on application of electronic communications in the decision-making process of commercial companies in Albania.

RECENT DEVELOPMENTS

Albania

- *Hydropower plant concession projects: New timeline for obtaining relevant permits and preparation of the project by the concessionaire.*
- *Council of Ministers adopts new rules about the examination process of claims made in the context of bidding concession procedures.*
- *Amendments to National Taxes Law and Excise Law are published in the Official Gazette.*
- *Social and Health Contributions: New minimum and maximum monthly salaries subject to payment of social and health security contributions.*

Kosovo

- *A new VAT system.*

ARTICLES

- *“The electronic communication in the decision making of commercial companies under the new Albanian Company Law”.*

We hope you enjoy reading this issue, and will be glad to welcome any of your queries should they arise in relation to the topics herein contained.

RECENT DEVELOPMENTS

Albania

- *Hydropower plant concession projects: New timeline for obtaining relevant permits and preparation of the project by the concessionaire*

Upon decision of 16 June 2010, the Council of Ministers approved an amendment to the Decision of Council of Ministers no. 27, dated 19.01.2007 “On Approval of Evaluation Rules and Granting of Concessions”, as amended (“Decision no. 27”). This decision is effective from the date of its approval (June 16, 2010), and shall be published in the Official Gazette.

Following to the provisions of this decision, the Contracting Authority after assessing the project may determine the timelines within which the concessionaire of a hydropower plant project should prepare the project and obtain the relevant permits.

The amendment provides for reference timelines depending on the capacity of hydropower plants:

- up to 12 months when the capacity do not exceed 5MW
- up to 18 months for a capacity of 5 MW up to 20 MW and

- up to 24 months for hydropower plants which capacity exceeds 20 MW.

In addition, the amendment applies also to those concession agreements already entered into by the Contracting Authority and the concessionaire, which are missing specific provisions regarding the timeline for obtaining the relevant permits. In such cases, the concessionaire shall have the right to postpone/fix the term in pursuance with the above specifications, commencing from the date of entry into force of the concession agreement.

Such postponement shall be reflected in an addendum to the concerned concession agreement, which [addendum] shall enter in force after the approval by the competent Minister and signature of the parties to the concession agreement.

- *Council of Ministers adopts new rules about the examination process of claims made in the context of bidding concession procedures*

Following adoption on 5 May 2010 of the normative act “On Some Amendments to Law no. 9663, dated 18.12.2006 “On Concessions” the Council of Ministers has approved on 16 June 2010 the regulation providing for the rules specific to the examination process of claims made in the context of bidding concession procedures. Such decision and the relevant regulation are not published yet in the Official Gazette. For more details on the normative act dated 5 May 2010, follow the link: <http://www.bogalaw.com/pdf/In%20Focus%20-%20Issue%2001-2010.pdf> (“In Focus” issue 01/2010).

- *Amendments to National Taxes Law and to Excise Tax are now published in the Official Gazette*

Law no. 10280, dated 20.05.2010 amending law no. 9975, dated 28.07.2008 “On National Taxes” is now published in the Official Gazette no. 73, dated 29.06.2010 (and shall enter into force 15 days after such publication). Furthermore, law no. 10286, dated 03.06.2010 amending existing law On Excise Tax was published in the Official Gazette no. 79 as of 2 July 2010 (and shall enter into force 15 days after such publication). For more details, follow the link: http://www.bogalaw.com/pdf/Tax_Alert_05-10.pdf (our Tax Alert issue 05/2010).

- *Social and Health Contributions: New minimum and maximum monthly salaries subject to payment of social and health security contributions*

The Council of Ministers has approved the new decision no. 477, dated 30.06.2010, which amends decision no. 1114, dated 30.07.2008 “On Some Matters implementing the Legislation related to the Social and Health Security in the Republic of Albania” (the “New Decision”). The New Decision was published in the Official Gazette no. 76, as of 1 July 2010 and is effective upon such publication.

Contributions basis

The New Decision increases the minimum and maximum monthly salaries which serve as the basis of calculation of social and health security contributions. Specifically, **starting from 1 July 2010**, the minimum monthly salary is increased from Leke 16,120 to Leke 16,820 and the maximum monthly salary is increased from Leke 80,600 to Leke 84,100.

Kosovo

- *A new VAT system*

The Kosovo Assembly approved on 29 December 2009 Law no. 03/L-146 “On Value Added Tax” (the “New VAT Law”) which abrogated the VAT Law no. 03/L-114, dated 18 December 2008 (the “Abrogated VAT Law”).

The New VAT Law entered into force on 1 July 2010, although initially it was planned that the said law becomes effective on 1 January 2010. The Kosovo Assembly decided on postponement of the entry into force due to reasons related to the complexity of application of new VAT schemes.

Highlights of most important changes of the New VAT Law are set out below.

The New VAT Law reflects the provisions of EU Directive 2006/112 “On the Common System of the Value Added Tax”. It introduces the possibility of application of different VAT rates (subject to approval by the Kosovo Assembly). These rates may vary between 5 percent and 21 percent.

Social security number

For those employees who have obtained the electronic identification card, the employer is no longer required to apply with the Social Security authorities for a separate social security number. According to the New Decision, the identification personal number shall serve also as social security number of the employees.

Differently from the Abrogated VAT Law, the New VAT Law provides for a wider definition of taxable and non-taxable persons, supplies of goods and services and transfer of business activity.

The New VAT Law introduces new criteria regarding the determination of the place of supply of goods. In contrast to the general rules stipulated in the Abrogated VAT Law, the New VAT Law provides for different treatment between the supply of goods when transportation services are included in the supply of goods or not, the supply of goods on board of ships, aircrafts and trains as well as the supply through distribution systems.

The place of supply of services is more detailed in comparison to the Abrogated VAT Law. The New VAT Law differentiates between supplies of services to taxable and non-taxable persons. Under the New VAT Law, as a general rule, the place of supply of taxable persons shall be considered the place of residence of the recipient/beneficiary of services. In addition, the New VAT Law contains particular rules affecting the services rendered in connection with immovable property, transport, services related to special events and those rendered in board of transportation means.

Another provision that might have an impact in practice regards the moment of application of the VAT. Pursuant to the New VAT Law, the continuous supply of goods or services shall be considered as being completed in intervals of one month. This would imply that the invoice for continuous supply of goods or services must be issued at least once per month.

It is to be highlighted that the New VAT Law introduces also the concept of electronically supplied services.

As regards the list of exempted supplies, the provisions of the New VAT Law state the exemption of certain activities related to the public interest e.g. hospital services, supply of human organs, blood and mother milk, services of dental technicians and professionals¹, services linked to welfare, tuitions fees, spiritual and religious welfare, services in return of subscription fees in accordance with their rules by non-for-profit organizations¹, supply of materials used in printing industry, provided certain conditions are met etc.

Apart from the above cited activities and what was considered as exempted supplies under the Abrogated VAT Law, the New VAT Law includes also in the list of exemptions the insurance and its related services, the supply of postal services, fiscal and similar stamps and betting, lotteries and other forms of gambling.

Differently from the Abrogated VAT Law, the New VAT Law provides for a list with restrictions on deductibility of the input VAT. In such regard, the Minister of Finance is entitled to adopt sub-legal acts determining the implementation and the supplies which would be subject to the said restrictions. Overall, the restrictions provided in the New VAT Law are quite similar to those indicated in the Administrative Instruction no. 01/2001, dated 01.09.2009 “On Implementation of VAT”.

Furthermore, a different practice deriving from the application of the New VAT Law concerns the manner of exercising the right to deduct the VAT in the following tax periods. Under the provisions of the New VAT Law, the input VAT may be claimed as a deduction at any time after the termination of the tax period pertaining to, but not later than in the last tax period of the calendar year following the year in which the taxpayer was entitled to deduct input VAT.

The rules applied in case of claiming VAT refund, as indicated below, are drafted more straightforward:

- (i) the VAT credit amount must exceed EUR 5,000 in the last month of a quarter of the calendar year;
- (ii) the taxable person must have been in credit position for each month of the quarter; and
- (iii) the taxable person must have submitted all the VAT monthly returns.

The New VAT Law introduces also the right of taxable persons to deduct the input VAT for goods which were in stock on the day before its VAT registration.

Further, reference is made also to the requirements of tax documentation, by differentiating between invoices issued to taxable persons and to other persons, invoices issued by the customer, debit and credit notes, simplified invoices and fiscal receipts as well as invoices produced and submitted by using electronic means and documents serving as invoices.

The New VAT Law introduces new special schemes as follows:

- Special schemes for travel agents;
- Profit margin scheme for second-handed goods, works of art, collectors’ items and antiques;
- Special arrangements for sales by public auction;
- Flat rate scheme for farmers;
- Special scheme for electronically supplied services;
- Special scheme for investments in gold;

The above mentioned schemes shall not apply during the transitional period which ends on December 31, 2012, except for the scheme for electronically supplied services.

Upon entry into force of the New VAT Law, taxable persons should arrange to submit monthly tax returns and remit the related VAT payment not later than the 20th of the calendar month following the end of each tax period.

¹ Applicable after 31 December 2012

ARTICLE

“The electronic communication in the decision making of commercial companies under the new Albanian Company Law”

Contributed by Kristaq Profkola

The Law no. 9901 “On the Entrepreneurs and the Commercial Enterprises” approved on 14.04.2008 (hereinafter the “Law”) intended to ensure an improved and clearer view of the internal structure and functioning of the companies established under the Albanian law.

Among the provisions of the Law, a significant innovative introduction, in a corporate governance view, is the enhancement of the institute of participation in the decision making of the companies. This is reflected in the possibility for the companies to apply the electronic notification, the electronic participation and the electronic voting in their Shareholders Meetings.

According to the Law, now it is possible for the companies established in Albania to provide in their Bylaws the possibility of notifying the essential information on the upcoming Shareholders Meeting by submitting an electronic mail to the shareholders of the company.

Moreover the participation of the absent shareholders and the electronic voting during the ongoing Shareholders Meeting may also be possible by means of appropriate electronic devices. This probably represents a new possibility of distant participation of the shareholders in the activity of the company in addition to the proxy voting, already present in the Albanian company’s decision making practice.

The application of electronic notification, electronic communication and electronic voting is foreseen by the Law for both limited liability and joint stock companies and it is clear that the intention of the legislator was to establish a useful choice of participation inside the activity of every important corporate governance body inside the companies.

Indeed, the on-line decision making process is foreseen also in the internal activity of the Administration Board. The members of the Administration Board are entitled to express their vote by electronic means unless this way of decision making is rejected by any member of the Board.

The Law requires all the activities related to the on-line decision making process to be assisted by appropriate electronic means. This is probably the only condition the Law provides to the Bylaws of the companies which want to make use of such newly introduced alternatives.

According to the Law, the appropriate electronic communication means that would assure a correct participation of absent members in the Shareholders Meeting are:

- the real-time transmission of the General Shareholders Meeting;
- the real-time communication enabling members to address the General Shareholders Meeting from a remote location;
- a mechanism of casting votes, whether before or during the General Shareholders Meeting, without the need to appoint a proxy holder who is physically present in the meeting.

The use of electronic means, for the purpose of enabling members to participate in the General Shareholders Meeting, may be subject only to such requirements and constraints necessary to ensure the transparency, accuracy and fairness of the process by providing the correct identification of members and the security of the electronic communication and only to the extent that they are proportionate to achieve those objectives.

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