

Albania | Issue 02/13

To keep you up-to-date with the latest economic and financial developments, this bulletin prepared by our Tax Team provides information that may affect the operation of your business in Albania.

New Instruction on VAT adopted by the Ministry of Finance

The Ministry of Finance issued recently Instruction no. 4, dated 22.01.2013 "On Some Amendments to Instruction no. 17/2008 "On VAT" (the "New Instruction"). It was published in the Official Gazette no. 5/2013 and became effective from 31 January, 2013.

Aiming to keep up to date with developments in such sector, but also to react towards certain interpretations on the New Instruction which conclude that, the petroleum industry has been waived from the right to benefit VAT exemption on import of oil byproducts, we present below an overview of the novelties introduced by the New Instruction.

I. VAT exemption to hydrocarbon sector

Following to the concern of entities engaged in the hydrocarbon sector regarding the VAT exemption on their supplies of services, the Minister of Finance introduced, through the New Instruction, the procedure for implementation of VAT exemption to services rendered from subcontractors in the hydrocarbon sector.

According to the New Instruction, the Albanian Natural Resources Agency (AKBN) will certify the VAT exemption status of the supplier on a contract basis (i.e. not for every invoice issued by the supplier, as has been the case until now).

In order to benefit from the VAT exemption, the following documents should be submitted from the service provider to the regional tax office:

- ii. certificate from AKBN which must confirm that the service is related to the research and development phases;
- iii. copy of the agreement between the contractor and the Albanian Government (ie. the petroleum agreement);
- iv. copy of the agreement between the contractor and its subcontractor.

In addition, the New Instruction has abolished a paragraph from the existing VAT Instruction which stated the following:

"In case of importing oil byproducts, for their own use, from companies exploring and developing oilfield areas, the VAT exemption will be given for the products and quantities indicated in the excise exemption authorization, issued by the General Tax Directorate, based on the joint Instruction of the Ministry of Finance and Ministry of Economy, Trade and Energy, no. 3, dated 04.05.2012 "On Determining and Documenting the Quantities of Oil Byproducts imported for own use, by Companies Exploring and Developing Oilfields Areas".

Such abolishment does not affect the right of the petroleum sector to benefit from the VAT exemption on import of oil byproducts. Since the said exemption is stated in the VAT law, it may not be abolished through a sublegal act (such as an instruction of the Minister of Finance). Furthermore, this paragraph became *de facto* non-applicable since 1 October 2012 when the new law “On Excise” (law no. 61/2012) entered into force.

Pursuant to law no. 61/2012, administration of the excise tax passed from tax to customs authorities; the old excise law and the above mentioned Instruction no. 3, dated 04.05.2012 were as a consequence abolished.

II. VAT deduction on fuel purchases

The New Instruction provides for the right of taxpayers to deduct the VAT amount paid on purchase of fuel as follows:

- entities engaged in production of bricks and tiles are allowed to deduct the VAT amount for those purchases of fuel, which do not exceed 33% of the annual turnover;
- entities engaged in transport of goods through technological vehicles are allowed to deduct the VAT amount for those purchases of fuel, which do not exceed 78% of the annual turnover.

III. Reimbursement of VAT to non-profit organizations for purchases made in the course of implementation of an IPA project.

Non-profit organizations that are implementing IPA projects financed from the EU are entitled to request reimbursement of VAT paid for their purchases. The New Instruction provides for the procedure of VAT reimbursement, which should take place within 30 days from the request.

Draft decisions of the Council of Ministers to implement the VAT exemption on import of machineries and equipment for investment purposes, as well as import and local purchase of iron and cement

Following recent amendment to VAT Law, whereby import of machineries and equipment for several investment categories is exempted from VAT, the Council of Ministers has drafted a decision, specifying in details the conditions and criteria upon which such exemption is granted.

In addition, two other decisions have been drafted, one on the implementation of VAT exemption on machineries and equipment imported by agribusiness and entities engaged in inward processing, while the other on VAT exemption on import and local supply of iron and cement used for building hydropower plants.

It is expected that all these decisions will be passed very soon by the Council of Ministers.

Below you will find a summary of the draft decisions.

I. Procedure on exemption of machineries and equipment imported for investment purposes

It is proposed that import of machinery and equipments, as defined in points g), gj), h) and l) of article 26.1 of the VAT Law, (in the frame of investment contracts (i) with a value of or higher than 50 million Leke; (ii) in the sector of inward processing; (iii) in the agribusiness sector and (iv) from small businesses for production purposes), shall be considered VAT exempt only when the imported machinery and equipments are directly related to these investment contracts and the import is done by the investor itself. A taxable person that imports machinery and equipments for re-sale does not benefit from the exemption.

A list of machinery and equipments directly related to the above investments will also be approved by the Council of Ministers.

In order to benefit from the VAT exemption, the taxpayers falling under one of the above mentioned categories [from (i) to (iv)] must obtain an authorization from the General Customs Directorate (GCD). The latter will issue the authorization within 30 days from submission of the supporting documents.

II. VAT exemption on import and local supply of iron and cement

Under the VAT Law, as amended, entities investing in construction of hydropower plants that import iron and cement to be used as raw material for said construction may benefit from VAT exemption on the importation and local purchase of such products (see Tax Alert issue 01/2013).

To benefit from the VAT exemption on import of iron and cement, an authorization must be obtained from the GCD (to be issued within 30 calendar days from the submission of the supporting documents); while for local purchases, the authorization must be issued from the General Tax Directorate.

It is important that the quantity of iron/cement either imported or locally purchased must be used exclusively for the investment; otherwise the tax authorities will disregard the VAT exemption authorization and claim payment of the VAT amount.

III. VAT exemption to agribusiness and inward processing operators

Under recent amendments to VAT Law, entities involved in agribusiness investment contracts and inward processing investment contracts are exempt from VAT on the import of machinery and equipment used for the implementation of these contracts.

Pursuant to the draft decision of the Council of Ministers implementing this amendment, shall benefit from said exemption, taxpayers that hold an authorization by the GCD for carrying out their activity under an inward processing regime. If the entity has not undertaken any inward processing activity (import-export of goods under the inward processing regime) within 3 years from obtaining the VAT exemption authorization, it will automatically have to pay the VAT for which the exemption was obtained.

Concerning agribusiness, shall benefit from the VAT exemption on import of machinery and equipments, those individuals or legal entities that produce or process products of agriculture, cattle, aquaculture, fish and forestry as well as those involved in the production and processing of agricultural inputs such as seeds, saplings, fertilizers, pesticides, and veterinary medicaments.

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