

### Issue 02/08

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

*On 19 May 2008, the Parliament of Albania adopted the Law no. 9920 On Tax Procedures in the Republic of Albania ("New Law"), which abrogates the previous Law no. 8560, dated 22.12.1999 ("Old Law") and Law no. 7758, dated 12.10.1993 On Documentation and Keeping of Accounts for Tax Purposes. The New Law is currently under examination and approval by the President of the Republic.*

*This Tax Alert presents a brief summary on the provisions of the New Law.*

#### **General Tax Directorate to Issue Individual Guidelines**

The New Law explicitly indicates that it is the duty of the General Tax Director to issue opinions and interpretations on tax legislation depending to specific circumstances of the taxpayer. This new provision is important since no penalty may be due by the taxpayer when acting in accordance with these opinions and interpretations.

#### **Official Communications**

Official communications to the taxpayer including tax assessments, decisions, notices etc. shall be via registered mail. Upon expiry of a period of 7-days (instead of 10-days foreseen by the Old Law) following the date in which the post service accepted the document, it is presumed that the taxpayer received the official communication.

#### **Records of the Taxpayer**

The taxpayer should keep accounting and financial records and safeguard them for a period of at least 5 years starting from the last fiscal year to which the records pertain. Regarding the invoices, the requirements and provisions of the New Law are similar to those of the Old Law.

## **Tax Declarations**

The New Law provides that in cases when the expiry date for filing and submission of tax declarations/forms falls on a holiday, it shall be postponed to the first working day following the holiday. If the filed tax declaration is incorrectly completed, the taxpayer may file an amended one, but no later than 12 months from the day of the initial filing. No penalties would be due if the amount of the tax obligation as per the amended declaration is increased.

## **Tax Assessments**

The tax authorities should deliver through registered mail to the taxpayer the tax assessment notification and request for payment of tax obligations within 10 calendar days from the assessment. The taxpayer is entitled to challenge the said assessment within 30 calendar days from the date the tax assessment is received or considered received (see “Official Communications” above).

The tax authorities has the right to apply alternative methods of reassessment of the tax obligations when the circumstances as provided in the New Law so require (i.e. non compliance with arms’ length principle on transactions between related parties or lack of material economic effect of the transaction).

The right of tax authorities to perform a tax assessment is prescribed within 5 years from the last date of the tax declaration filing. The prescription is interrupted upon occurrence of certain events e.g. appeal.

The New Law provides also for reimbursement of the taxes paid in surplus; the overpaid tax amount is offset with outstanding tax obligations and the remaining amount (if any) upon the written approval of the taxpayer is either reimbursed within 30 days or maintained for being offset with future tax obligations.

## **Interest Rate for Late Payment of Tax Obligations**

The interest is applied for delayed payment of the tax obligation. The interest amounts to 120% of the average 3-months inter-bank interest, published by the Bank of Albania.

## **Deregistration from Tax Authorities**

The National Registration Centre (NRC) and the Court (the later for deregistration of non for profit organizations) notify the relevant tax authorities on the closing procedures. The tax authorities will perform a tax audit of the taxpayer and notify their opposition to either the NRC or the Court within 30 days from the notice receipt. If no response is given within this term, the NRC or the Court performs the cancellation of registration of the taxpayer from the relevant registers.

## **Exemption from Provision of Information to Tax Authorities**

As a general rule, third parties being in financial or commercial relationship with the taxpayer which is subject to a tax inquiry should provide information to tax authorities when requested. Exception is made for the members of the taxpayer’s family and lawyers, notaries, tax consultants, doctors for the information they obtain during the normal course of their professional activity.

## **Tax Audit**

The taxpayer is entitled to challenge the preliminary results of a tax audit within 5 calendar days following the day the draft audit report is received by the taxpayer. The opposition is examined by the audit team within 5 working days from its receipt. The opinion and reasoning of the audit team on the opposition is reflected in the final tax audit report.

No additional tax audits may take place for the same tax obligations, except for circumstances indicated in the New Law (e.g. lack of collaboration of the taxpayer, fiscal evasion proved by the authorities, lack of compliance with the procedures by the tax inspectors).

## Collection of Unpaid Tax Obligations

The tax administration has all powers to collect the unpaid tax obligations for which no appeal is presented or the outcome of all levels of administrative and judiciary appeal is not in favor of the taxpayer.

As a general rule, the tax authorities deliver a request for payment of outstanding tax obligations. In case of failure of payment by the taxpayer within the 30 days term, the tax authorities are entitled to:

- issue a written order to the attention of all banks where the taxpayer has an account to block the said account.
- seize and sell the properties of the taxpayer in a public auction;
- request the payment of the outstanding tax amount to third parties, under some specific circumstances.

## Penalties

The New Law provides for penalties in case of contraventions such as non issuance of the tax declaration within the legal term; non payment of the tax obligations and contributions within the legal term; filing of an incorrect tax declaration or request for reimbursement; fiscal evasion; non declaration of new employees.

## Liability of Shareholders and Administrators

The tax authorities may request the payment of the outstanding tax amount to shareholders and administrators of the taxpayer. The tax liability remaining outstanding after the sale of the properties of the taxpayer is due by the shareholders and administrators of the taxpayers, in accordance with article 16 of the new law no. 9901, dated 14.04.2008 On Entrepreneurs and Commercial Companies.

To be noted that article 16 of the law no. 9901 recognize the personal liability of the shareholders and administrators of the company for the company's liability upon fulfillment of certain conditions.

## Tax Administrative Appeal

The taxpayer is entitled to appeal against any tax assessment and decision that affects its tax obligation, request for reimbursement or tax relief or any special tax executive act in relation with the taxpayer. The appeal is submitted in written to the Tax Appeal Directorate near the General Tax Directorate. In order to be examined, the appeal must be submitted within 30 calendar days and the taxpayer must pay the entire amount of tax obligation (not including the penalties indicated in the tax assessment).

The New Law does not provide for the possibility of submitting a bank guarantee instead of payment of the tax obligations in the course of the appeal procedure.

In case within 3 months from the day of receipt of the appeal, no decision is taken by the Tax Appeal Directorate, the taxpayer is entitled to appeal before the court. Hence, the New Law abrogates one level of the tax administrative appeal i.e. the Tax Appeal Commission, near the Ministry of Finance.

The tax authority, whose act is subject to appeal, may challenge the decision of the Tax Appeal Directorate before the court within 30 calendar days from its receipt.

In case the decision of the Tax Appeal Directorate leaves into force the decision of the tax authority, the interests for delayed payment and penalties are payable by the taxpayer within 30 calendar days from the day the decision is received.

# BOGA & ASSOCIATES

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