

## SUMMARY OF 2016 IC RECOMMENDATIONS

### -MEETING NO. 4-

#### FOR THE IMPROVEMENT OF DISPUTE RESOLUTION MECHANISMS BETWEEN THE BUSINESS AND PUBLIC ADMINISTRATION

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*During this meeting were highlighted main problems regarding administrative complaint/appeal, focusing on the profile of the most frequent business disputes with the public institutions, as well as on the mechanisms at disposal to the parties for dispute resolution. IC approved in total 13 recommendations which were divided in 3 main areas as follows:*

**a) *Efficient Access to administrative appeal***

*To be approved in the short term*

1. Facilitation of access for businesses in exercising the right to administrative appeal in fiscal cases. Although that some improvements in this perspective have been done (i.e. Banking Guarantee as an alternative to prepayment has been stipulated under the Law 9920), further improvements are requested.

Guarantee of the real access in appealing procedures, aiming the relief of the pre-conditions stipulated in the laws for administrative appealing, may be achieved through one of the following alternatives:

- a) Business pay in advance, only a small portion (10%-15%) of the re-estimated tax or customs liability amount (not including fines) and not 100 % as they currently do; or
- b) Instead of paying in advance part of the liability, businesses pay only a non-refundable administrative fee for filing an administrative appeal at the appellate structure (according to the model currently applied for complains by the business at PPC).

The legislation on tax and customs should give the opportunity to appeal also to the de facto bankrupt entities, when the latter are able to prove insolvency (for example through a report of an independent expert in this area).

**b) *Efficiency of appeal structures within public administration***

*To be approved in the short term*

2. Decisions of TAD, as the upper administrative unit that decides on Appeal matters, should be automatically binding for the Regional Tax Directorates. The right of the Regional Tax Directorates to appeal the decisions of TAD further in court, according to the provisions of Article 109/3 of Law No.9920, should be abrogated
3. To draft/ include in the internal administrative acts (NANR, State Inspectorates, Tax Administration, Custom Administration) the procedures on mechanisms of prior constructive

consultation with businesses for discussing the problems and potential solutions (referring to the Law 146/2014)

4. Unification of the timelines for exercising the right of the administrative appeal is deemed necessary. It is recommended a timeline of 30 days from day of the acknowledgment about the administrative act. With the entry into force of the New Code of Administrative Procedures in June NANR, Central Inspectorate, GDT, GDC Minister of Innovation and Public Administration, GDT, GDC Council of Ministers, Ministry of Finance Council of Ministers, Ministry of Justice. Ministry of Finance Short-term Medium - term Medium- term Short-term 4 2016, is required to prepare, review, publish in due time the special administrative procedures to be in conformity with the New Code and awareness of the institutions on such.
5. Establishment of one stop shop for informing and raising awareness of the business to be compliant with the legislation (efficiency of structures that serve to the business in Tax/Customs/NBC)

*To be approved within a medium term*

6. To effectively increase the independence of TAD and separation of its functions from the structure of General Tax Directorate (GTD). Establishment of a collegial body of appeal, in the form of a “quasi court” in the framework also of the plans for the unification of tax and customs administration. This appealing structure should be established via a specific law and have competence to review the administrative appeals (above a certain amount) in respect to tax and customs administration acts.
7. Suggested to merge and centralize Inspectorates’ appeals at the Central Inspectorate, in order to enhance the professionalism, independence and trust regarding the appeal in the State Inspectorates. On this regard is recommended:

Amendment of the Law No 10433, date 16.06.2011 “On Inspections in the Republic of Albania” to define the competencies, structures and procedures of the Central Inspectorate related to appealing of decision from the subjects of inspections.

- Abrogation of paragraph 2 and paragraph 3 of article 51, in order for the appealing procedure to be centralized and be conducted by a specialized entity of the inspection system such as Central Inspectorate.
  - To amend the paragraph 4 of article 16 to allow the decision making of Central Inspectorate in cases of complaints of subjects versus the final decision of an inspection.
  - This competency to be added also to the functions of the Central Inspectorate in paragraph 2 of the article 16 of inspection unifying the “Supervisory Body” with the Decisions of Council of Minister for establishment of the supervisory body by abrogating the related paragraphs in respective DCMs of state inspectorates, which deal with “Superior Body”.
8. Informatisation (e-filing, online statements, online exchange of information, etc.) of systems between institutions of the administration such as for instance among the tax administration, customs administration, IPRO, transport directorates, etc. – improvement of institutional coordination (this would not only reduce the administrative processing time, but it would also increase transparency.
  9. Interpretation through a special Instruction of Council of Ministers to public administration bodies for procedures to be followed regarding recommendations reported by Supreme

State Audit. Public administration bodies should review with working groups the tasks and recommendations made by the Supreme State Audit, in order to avoid their a priori implementation, especially in cases when their arbitrary implementation violates the legal security and the business legal rights. This would also reduce the costs of State Budget, in cases when the business rights are put in place by courts, and the State would be obliged to compensate the business for the caused damages.

10. Staff sustainability and continuous professional advancement of appeal structures in institutions. Joint training programs between businesses and administration would prevent disputes among parties. It is also suggested to organize joint training programs for the Administrative Courts, Tax and Customs Administrations through the school of Magistrates with the assistance of business associations, such as for example, the Albanian Association of Banks. This would help also in the unification of practices for both, the administration and the Judiciary. To be foreseen in the annual work programmes of the School of Magistrate and the General Tax Directorate and General Customs Directorate.
11. The unification of practices and preparation of commentaries for similar cases, especially in Tax, Customs and Inspectorates, possibly in the sectoral viewpoint, such as banking, agro-industry, natural resources, etc. From the viewpoint of businesses, experts and groups of interest contacted by Secretariat, the unification of consolidated practices it is considered as one of the most necessary elements which would reduce to a considerable extent the number of appeals filed against the decisions of the tax administration and improvement of business perception indicator related to it. An important role in the unification may be played also by the State Advocacy Office through its active role in interpreting legal cases of generalizing nature for the entire public administration. This requires also legal amendments to Law No. 10018, dated 13.11.2008 “On the State Advocacy Office”.

### ***Transparency of appeal structures***

*To be approved within a medium term*

12. The decisions of TAD/Inspectorates/GCD must be made public systematically. This obligation as well as the enforcement of the deadlines foreseen by the law when the administration has to reply top business complaints need to be part of internal audit programme. Control of implementation of appeal principles guarantees an accountable and professional administration.  
Publication of annual reports of GTD, GCD and special Inspectorates as well as the inclusion in this annual reports the outcome of administrative appeals and their progress in the Court.

***-MEETING NO. 5-***

## **INCENTIVIZING POLICIES TO ENCOURAGE INVESTMENTS: ALBANIA AND THE WESTERN BALKANS COUNTRIES**

*Subject of the analysis in this Meeting was to highlight incentivising investment policies in Albania, as compared to the other countries in the region, to bring about investors' point-of-view on these policies, but also concrete concerns on the climate of doing business in the country. IC approved in total 6 groups of recommendations which were divided in two main areas as follows:*

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**a) Concrete Incentives**

*To be approved in the short term*

1. Support to AIDA in offering promotional products for investors. With the support of the Ministry of Economic Development, Tourism, Trade and Entrepreneurship (MEDTTE) and in coordination with line ministries, AIDA shall prepare an inventory of all incentives that the Albanian legislation offers on investment and sectors, to be published on its webpage.
  - 1.1 To materialize the contribution of the Ministries in order to periodically put resources at the disposal of AIDA: Concretely:
    - To prepare an inventory of all incentives that the Albanian legislation provides for on investments and sectors, to be published on its webpage.
    - MEDTTE should make available the integrated data source of public assets that it administers, in order for AIDA to promote investment opportunities.
    - Line ministries should make sectoral data available, so that AIDA can compile sectoral informative and promotional brochures.
    - Line ministries should make information available on concrete investment projects that they have initiated or are responsible for, for purposes of promoting these projects to investors who do not present with concrete investment plans.
    - According to the sector they are competent for, each ministry (or competent subordinate institutions) should provide to AIDA detailed information on all administrative steps and links (permit/licence/authorizations) necessary to realize an investment.
    - Ministry of Social Affairs and Youth and the National Employment Service should put at disposal to AIDA, clear schemes of support means that the government provides to the investors (according to investment sectors). Current schemes function on application-basis. AIDA should be well-informed on the procedures.
  - 1.2 AIDA should design sectoral promotional products with the support of MEDTTE, starting with pilot zones or pilot sectors during the preparatory stage. A sector of particular interest that requires the engagement of many institutions for the preparation of a full promotional product is the automotive industry.
  - 1.3 To enhance information provided by AIDA through the webpage for investors and, if possible, to provide sectoral data and a database with the list of concrete sites/places for concrete investments. To increase resources at the disposal of AIDA for purposes of meeting the obligations that stem from the law “On strategic investments”.
2. The provision of tangible incentives to investors and businesses:
  - 2.1 The Ministry of Finance through discussions with interest groups to consider the option to not apply tax on the part of profits to be reinvested, as a measure requested by businesses to incentivize domestic and foreign investors. It is suggested a deep discussion among public administration and business on the impacts, application and capacities of both parties to monitor the accurate destination of reinvestments.

- 2.2 The Ministry of Finance, through discussions with interest groups, to consider to extend the tax losses carry forward term beyond 3 (three) years.
- 2.3 The Ministry of Social Welfare and Youth to consider the possibility of having the State, not the entrepreneur, provide for the social and health insurance contributions for the first month of work (training period) of newly hired staff in labour intense and in-development sectors such as BPO (companies that operate activities for services outsourcing & call centres).

*To be approved within a medium term*

- 2.4 Legal provisions to enable new Municipalities with an effective opportunity to create and develop their economic zones depending on assets and resources that they possess.

**b) *On the investment climate***

*To be approved within a long term*

3. To establish a workforce that is qualified and certified on specific technological processes.
4. Inter-institutional coordination to reduce the businesses' administrative burden, to allow flexibility in communications with the business, as well as transparency and early inclusion in the drafting of acts that have an impact on the business.
5. An essential review of the tax legislation to reduce bureaucracies and to ultimately stabilize it.
6. The establishment of pilot zones for investments in tourism based on economic and urban development plans is recommended.

**- MEETING NO. 6-**

**FOR FORMALIZATION OF AGRICULTURE: THE WELL-FUNCTIONING OF THE VAT COMPENSATION SCHEME AND PROMOTION OF INVESTMENTS**

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*During this meeting, IC discussed an analysis prepared by the Secretariat which highlighted the problems of formalisation in the agriculture in the framework of the government initiatives for issuing farmers with a Taxpayer's Identification Number, compensation scheme of 20% of VAT for agricultural producers and financial support in the sector. Focus of the analysis was related mostly to the role and real impact of these measures in the formalisation of stakeholders, structuring of the market, investment promotion and food safety. Main recommendation approved by the IC required:*

***“Set up a working group composed of MARDWA, MoF, MEDTTE, and GTD to carry out an in-depth study of the process in an intensive agricultural area with a high percentage of registered farmers, considering all the production chain in one***

***agriculture subsector. The study will focus on: VAT compensation scheme; subsidy schemes and its relation to VAT; factors impeding or supporting formalization process (i.e. issues related to inputs). The working group should analyse the efficiency, economic and social impact of the formalization process.”***

*IC approved in total 16 recommendations out of which, 10 submitted by the Secretariat and 6 other proposed during the meeting by the IC members, structured as below:*

**a) *Decision making/policy actions***

*To be approved within a short term*

1. Simplification of subsidy schemes for farmers enabling access through submitting the auto-invoice.
2. Increase the amount and number of the subventions schemes.
3. Simplification of procedures and online verification for farmers among the governmental agencies.

*To be approved within a medium term*

4. Registration of Farm & Farmers. Connection of the Register with TIN and with an efficient system of VAT compensation. Get finalised ASAP calibration of statistics in agriculture with the support of EUROSTAT. To be defined the vision on the steps to be taken forward by the authorities i.e.: if there will be any linkage between TIN and farmer's land.

*To be approved within a long term*

5. Cash limit remains subject of discussions. However, a review is recommended after a period of 1-2 years aiming to verify the effectiveness of the current threshold. Electronic verification of farmers' status by the regional tax directorates. Agreement between parties (buyer of agricultural product and farmer) be printed out at the moment the transaction is put into practice. Amendment of article 8 of the instruction on VAT compensation scheme, should be taken into consideration.

**b) *Recommendations concerning administration***

*To be approved within a short term*

6. Enforcement of the regulatory and monitoring functions, coordination among the relevant institutions.

*To be approved within a medium term*

7. Formalization to be closely linked to traceability, from final products to inputs and services. Monitoring of the application of standards and technological cards in the whole value chain.

8. Active role and cooperation of responsible actors to accelerate the process of land registration.

**c) *Recommendations concerning awareness***

*To be approved within a medium term*

9. Special platform (window) of assistance and information to agricultural sector (clarification and awareness on the TIN). Increase dissemination of information and raise awareness among the farmers.

**d) *Other recommendations submitted by the IC Members***

10. In order to promote investments in agriculture, VAT reimbursement should be applicable in all values chain including production cycle (refer to specific subsectors).
11. The prerequisites for benefitting from the subsidy schemes should be based on unbiased and cold criteria. All the eligible winners should be declared as winners and should receive subsidy despite the amount.
12. The Government to reduce the reference prices for the purchase of the agricultural land by the investors. The reference prices are considered as abusive since they do not correspond to the actual and market price of land.
13. Farmer/farm registration and farmer's card could be considered as initial points of mass formalization
14. Banks to consider their presence closer to rural businesses through their local branches and dedicated services for agriculture and rural development.
15. MEDTTE to prepare and make available for investors an inventory of public properties. This inventory could be used as information for investors and municipalities to define suitable places for construction of collection points and market places.

*-MEETING NO. 7-*

## **ACCESS TO FINANCE IN AGRIBUSINESS**

*The meeting was held at Hotel Tirana International and chaired by Ms Milva Ekonomi, Minister of Economic Development, Tourism, Trade and Entrepreneurship (MEDTTE), with special participation of Mr Edmond Panariti, Minister of Agriculture, Rural Development and Water Administration, Deputy Minister of Finance Mr Ervin Mete, as well as business associations and international organisations which operate in the agriculture sector.*

*In this meeting, no concrete recommendations were approved by the IC, but it was presented a summary of preliminary findings of an analysis on the Agro-processing sector, funded by the European Bank for Reconstruction and Development (EBRD) as one the components of the EBRD's project for Facilitation of Albanian Agro-business. For more information: <https://www.investment.com.al/meeting/ic-meeting-no-7-access-to-finance-in-agribusiness/>*

## -MEETING NO. 8-

### ON THE REFUND OF THE VALUE ADDED TAX (VAT) 2015-2016

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*When tackling business concerns during 2015, especially on Tax Inspection and Informality, the Secretariat has emphasised the need for in time VAT refund, without delays and with the least administrative burden. The object of the analysis presented in this IC meeting was to identify the progress of the current VAT refund model, taking into consideration the latest legal amendments and businesses experiences during 2015-2016. The IC approved in total 14 recommendations, 10 of which submitted by the Secretariat and 4 other recommendations submitted by the IC members during the meeting. These recommendations are structured as follows:*

#### ***Time-terms and procedures on VAT Refund. Risk system.***

*To be approved within a short term*

1. Respect deadlines set forth in the applicable legal framework.

Automatic VAT refund should continue to be executed within 30 days for taxable persons that export more than 70% and between 50%-70% of their total sales value, according to the risk analysis, and within 60 days for all other taxpayers, again in accordance with the risk analysis. Conclusion of procedures within the ambitious deadlines set forth in the legal framework remains a challenge for the administration. Regardless of the fact that these deadlines can be somehow short, procedures should be carried out based on the following elements:

- Efficient risk analysis criteria, as in Recommendation No. 2.
  - Constant periodic training for the tax administration.
  - Obligatory interest on late VAT refunds for tax administration to businesses, in accordance with Article 76 of Law No. 9920
2. Ease of the procedural burden for the tax administration and businesses.
    1. Efficient application of the risk system to enable a reduction in practice of the number of controls, generally, of the tax administration (including controls on VAT refund). In this context cooperation and exchange of information should be strengthened between the GTD and the GCD regarding risk assessment on VAT refund, as part of plans to conduct joint analysis on risk in tax and customs offices.

2. Consideration of the risk elements in cases when the business has shifted within a certain period of time, for example, 1 year to full/thorough control to avoid the control on VAT refunds for tax periods included in this timeframe. This element should be acknowledged in internal guidelines for GTD inspectors
3. Proper application of VAT refund principles when the taxpayer meets the basic criteria, for example the amount of 400,000 ALL and for 3 consecutive months. Practices when the requested VAT amounts are acknowledged as recoverable to the businesses, but not refundable on the basis of unreasonable doubts or not grounded on the legal framework should be avoided.

*To be approved within a short term*

3. Further simplification of procedures on VAT refund.

Some of the businesses and experts contacted by the Secretariat go even farther in their suggestion to simplify the process through automatic VAT refund on monthly basis for every recoverable VAT amount. They are of the opinion that the risk of abusive practices can be fully avoided in this case through the conduct of thorough controls in accordance with the criteria of the risk system, real-time exchange of information between institutions, such as for example between tax and customs administrations, tax and NBC etc. From the Secretariat's viewpoint such a reform should be seen as a long term objective, rather than as a realistic opportunity for short term implementation in the conditions when the administration and the businesses themselves are at very early stages of consolidating their activity to guarantee compatibility with the applicable legislation.

- b) ***Recommendations for the improvement of the relationship administration-business***

*To be approved within a short term*

4. Transparency over internal procedures in addressing VAT refund cases.

It is suggested that an internal document on the tax administration is drafted and published – Rules of procedure for the VAT refund, detailing the fundamental principles and risk criteria, concrete steps, procedures and deadlines that various levels within the tax administration, including the Risk Department, Control Department and VAT Refund Department should bear in mind regarding this procedure. The document will enable the professional enhancement of inspectors, especially at the local level, but will also standardise the process from central to local level. The publication of these Rules of Procedure is recommended as an expression of high standards of a transparent, accountable administration with a view on taxpayers.

*To be approved within a medium term*

5. Improve information offered by GTD through an interactive website (including a helpdesk or hub) for businesses, to enable the fiscal education of taxpayers and increased transparency, but above all, to facilitate a more structured service. From the Secretariat's point-of-view and as businesses underlined, this information is indispensable, but remains basic and does not offer guidance for businesses' specific needs. It is necessary

that information reaches taxpayers in a more structured way, be it via the official webpage or through online training sessions, at set times, for certain business categories. For example, it is difficult for the average taxpayer to surf the current webpage, even when searching for the most recent legislative amendments (2015- 2016).

6. Budget plans should not determine the tax administration’s decision-making for refund delays on recoverable VAT. This recommendation was presented during the Focus Group meeting of the Secretariat with experts of the area on 07.11.2016. It was admitted that the tax administration is conditioned in respecting VAT refund procedures, among other things, from the need to respect the plan of revenues generated from tax, as projected by the Ministry of Finance. According to the experts, the refundable VAT line must not be the responsibility of the tax administration, but must be planned as a separate budget line. In this way the tax administration would avoid “conflict of interest” in accomplishing its revenue plan on one hand and respecting deadlines for the refund of the recoverable VAT.

*For continuous implementation*

7. Businesses need to further build “their capacities” in terms of receiving timely and accurate information regarding any changes that affect the environment they operate in. The analysis of the Secretariat and meetings with all stakeholders found that, in order to provide this service to the business, it is indispensable for business associations to perhaps engage “dedicated person,” by putting at their disposal timely and accurate information that would enable a more structured discussion and consultation process about changes affecting the businesses.
8. Increase tax administration capacities through continuous and tailored training on specific procedures including the VAT refund. (Ref. IC Recommendation in Meeting No.2-Tax Inspection)
9. Integration and consolidation of the government agencies' services in e-Albania Portal. Reduce time and costs for business while getting routine attestations and declarations from GTD, GCD, IPRO etc. Promote the Portal services in the respective administrations.

**c) *Recommendations on investment climate***

10. The reform launched in 2015, should be further structured, efforts for the enforcement of anti-informality measures should be improved. As the IC recommended during meeting No. 3 “Informality as a common Government – Business challenge” every measure in the context of the formalization reform must take place in partnership with honest businesses. Constant application of measures against businesses which carry out their economic activities without issuing tax invoices must be of priority. The application of such measures should not only be punitive, but educational at the same time, for all taxpayers, and should finally aim to provide proper conditions for fair competition.

**d) *Other recommendations submitted by the IC members***

11. Increase the number of human resources of tax administration as a necessity of offering to the business a fast and efficient administration.
12. If the taxpayer has been subject of a full and deep tax-audit during the last year and not subject to the tax re-assessment, tax administration should consider this fact by proceeding with automatic VAT refund for the taxpayer without any further tax audit.
13. Increase fiscal education of taxpayers, aiming to increase their compliance with tax system.
14. IC through Secretariat to perform periodic assessments i.e. Surveys with businesses on procedures, time-terms and issues on VAT refund.