

SUMMARY OF 2015 IC RECOMMENDATIONS

-MEETING NO. 1-

A. DEREGULATION REFORM

1. Encouraged and supported finalisation of the deregulation reform of the *Ministry of Economic Development, Tourism, Trade and Entrepreneurship*, recommending to be very careful with the deadlines, coordination of actions in this aspect in order for the process to be of less risk and burden to the business.

-MEETING NO. 2-

A. TAX INSPECTION

The main legislative changes should substantially refer to the following:

- Law No. 9920, dated 19.05.2008 “On Tax Procedures in the Republic of Albania” (as amended) – (Law 9920);
- Instruction No.24, dated 02.09.2008 “On Tax Procedures in the Republic of Albania” (as amended) – (Instruction No.24);
- Regulation No.1 of GTD, dated 28.04.2009 “On Tax Audit Selection Procedures”;
- Internal Manual of Inspectors.

The recommendations are divided in three main directions affecting in all perspectives the performance of the tax audit system in Albania.

a) Changes in the legislation

To be approved in the short term:

1. Government should ensure a fully transparent system of tax inspections, by publishing the main risk indicators/criteria used by the Electronic System of Risk to identify the businesses with risk and therefore subject to Inspections. The criteria used should be tailored and customized per industry (tourism, services, banking, textiles, etc.) and size of the business. While obviously the formula used by the system for the selection should remain strictly confidential. The main risk indicators/criteria used by the Electronic System of Risk might be considered to be mentioned in general at the Article 80 paragraph 4 of the Law No.9920. This change would increase transparency standards of the tax administration while selecting the business subject to inspection and would reduce the rumours according to which tax administration selects the business based on subjective criteria and not objective ones.

2. In addition, subsequent changes have to be performed and approved in the Instruction No.24, and internal Manual on Audits where to be defined clearly and in more details the following:
 - *Risk factors for automatic risk selection system.* The risk factors should be more detailed and transparent with the taxpayers without disclosing the specific formula and other quantitative indicators. The automated risk-based selection system should make use of all information collected by tax authorities (through tax returns, VAT books and financial statements uploaded by taxpayers) but also of the information received by third parties. The risk criteria should also take into consideration and be tailored as per Micro and Small business activities (e.g. trade, services, manufacturing, transport, hotels, etc.).
 - *Interventions in the Electronic System of Risk.* Tax administration structures/inspectors cannot intervene case by case in the Electronic System of Risk in order to determine the business subject of Inspection. If interventions for improving the System become a must, it should be based on objective criteria clearly stated in the Instruction No.24. The same for the frequency of such interventions in order not to leave room to tax administration for discretionary abusive interpretations while selecting the businesses subject of inspection.
 - *E-audit procedures.* To be conducted by the tax inspector in distance using the information and sources already being collected by the tax administration structures and other public institutions that may include and perform the following:
 - ✓ *Cross check the declaration made in the customs authorities with the declaration available at tax authorities;*
 - ✓ *Analyse the financial statements and other documentation/information provided by the taxpayer;*
 - ✓ *Analyse taxpayers' data in order to propose whether or not the taxpayer should be subject to tax verification procedures.*
3. Article 81 of the Law No.9920 does not set up a timeframe for prior notifications to the taxpayers as related to the tax audit. Law No.9920 and Instruction No. 24 under their respective Articles 81, should set up a timeframe of 10 calendar days for prior notification to the taxpayer in cases of tax audit, except for the cases of in-site inspections. This procedure would reduce the abusive and discretionary decision of Inspectors and also would provide reasonable time at disposal to the taxpayer to prepare the massive documents and allocate the necessary human resources to tax audit. This change would be especially relevant to big taxpayers and it would help in creating a positive business environment to the taxpayers and building partnership with tax administration.
4. Additionally to the above, the following amendments should be made to the Article 81 of the Law No.9920 and to the Instruction No.24 with regard to the elements to be included in the Prior Notification to a Tax Audit.

- *The Inspector should specify in the notification the documentation that will be required to the taxpayer during the tax audit.*
 - *The Inspector should specify in the notification the people that will be interviewed.*
 - *The Inspector should specify in the notification any other analysis that tax inspector would like to have an earlier input.*
5. The current procedure under which the RTDs appeals in the administrative courts against the decisions of TAD is not effective and it penalizes taxpayers. In this context the following are recommended:
- 1) Abrogation of Article 109/3 of the Law No.9920. The decisions of TAD as the upper administrative unit to decide on Appeal cases, should be automatically binding to the RTDs and not subject to further appeal to the Administrative Court.
 - 2) The Amendments to the Law No.9920 which can effectively increase TAD independence and separation of its function from the structure of GTD should be considered as a priority.
6. The alternative of paying in advance, prior to the initiation of an Appeal procedure, 100% of the tax due remains a strong barrier to the appealing process. Alternatively to the “Bank Guarantee” as provided under the Article 107, the taxpayer should be legitimated to initiate the Appeal procedure, by paying only 50% of the tax due (excluding interests). Interest will of course continue to accrue on the remaining unpaid 50% of the tax due.
7. Amendment of the legal provisions on re- audit. TA Office should be considered to have an active role during the re-auditing procedures described under the Article 85 of the Law 9920. It is recommended that the re-auditing to be performed by the tax administration should be made only upon receiving prior approval of the TA Office. In this perspective, the competencies of the TA in the light of Law No.9920 should be re-dimensioned, aiming to enlarge the role of the TA in the tax audits 19 as well as to provide further guarantees to the business from abusive actions of tax administration.

To be approved within a medium term:

8. The adoption at the highest level of the 90% electronic risk based system in all kind of audits, not only for the VAT reimbursement. The Electronic System of Risk could focus not only on VAT but also on other types of taxes (e.g. Tax on Income and Profit) for the automatic selection. Despite the current efforts undertaken, due the complexity of such application, GTD needs to consider a plan of action in this direction for the next 3 years.

b) Tax Administration

To be approved within a short term:

1. It is recommended that specialized tax inspectors are appointed based on the taxpayer's profile (small, medium and large taxpayers) and sectorial specifics. In addition, it is necessary to improve the capacities and resources through annual training sessions as well as remuneration packages of inspectors, in particular of those working in TAD and VIP Taxpayers Directorate.
2. Although GTD publishes regularly its Technical Decisions and TAD has recently started to publish some of its own decisions, there are still some controversial interpretations of the laws and by-laws by the structures of the Tax Administration and its officials while evaluating the same practices. Many replies to the taxpayers lack clarity and simplicity. The above could further lead to the increase of the perception on corruption practices:
 - 1) GTD and TAD should consider increasing the capacities on legal analyses and unify their own practices, as well as to reflect the final decisions of the Courts for similar cases;
 - 2) GTD to prepare and publish in its official website the Annual Commentary of Cases. The aim of this document should be to consolidate and unify the different interpretations for the same practices.
3. Tax inspectors should document and share with the taxpayers any finding during the tax inspections and tax audits. Although, the sharing of tax audit findings with taxpayers is defined specifically in the law, this remains still a concern and therefore administrative measures have to be taken for the inspectors that do not comply with this rule. Clear penalties should be provisioned also for members of tax administration structures when committing administrative offences.
4. Tax inspections (risk based selected) should be done in teams of 2 or 3 inspectors, in particular in VIP businesses and in the comprehensive and complex audits.

To be approved within a medium term:

5. To increase the expertise of inspectors through continuous training in tax and accounting by professional and relevant organization such as IEKA, and national/ international reputable tax and accounting companies.
6. Joint trainings of tax inspectors and businesses based on sectors can be developed by the Tax Administration.

c) Transparency and Awareness Raising

To be approved within a short term:

1. Publication of GTD and TAD annual reports as means of increasing the standards of transparency to the public;
2. TAD decisions should be published systematically (protecting confidentiality);

3. The website to provide information also in the English language;
4. 100% availability/accessibility of the website.

To be approved within a medium term:

5. Stabilization of the fiscal package and tax procedures through public consultation in order to be planned in advance by the business in their investments plans.
6. The development and publication of an annual communication program with business associations diversified by sectors on tax legislation and procedures.
7. GTD should consider to develop a procedure in its information system for the electronic notification of the taxpayers (e.g. through pop up notifications/alerts) on the relevant changes in the tax legislation. This is especially convenient to small businesses which do not have the proper resources to keep up with the frequent changes on tax legislation.

B. DRAFT LAW “ON BANKRUPTCY”

1. Finalisation of the draft law “On Bankruptcy” and its approval in the Albanian Parliament, also in the framework of addressing the issue of non-performing loans.

-MEETING NO. 3-

A. INFORMALITY: A COMMON GOVERNMENT-BUSINESS CHALLENGE

Referring to the findings of Analysis with groups of interest, the recommendations are oriented in five major pillars, detailed as following:

a) Formalization Reform – Partnership with Business

Recommendation 1 – short term

Preparation and approval by the Council of Ministers of a Comprehensive Strategy against informal economy on the basis of sectorial analyses, which takes into consideration the work done to date and creates the image of a serious and long term commitment of Government.

The document should be accompanied by an action plan, on sectorial approach, timelines and well-defined responsible institutions, consulted and coordinated with business representatives.

The document should be published and the preparation process should be transparent and all-inclusive. The formalization could be gradual and based on a platform with clear rules for the business. This is due to the fact that different sectors have different fiscal and social specificities which impact on the level of informality, for example, the energy sector or the banking sector are more formal and regulated compared with the agribusiness or trade, where a higher degree of informality is easily observed.

b) A Tax System Responsive to Formalisation

Recommendation 2 – mid-term

Reassessment and analysis of the current tax system (the burden and the politics) whether it discourages or encourages formalization on the basis of the following elements:

a) *The discourse on the VAT /Profit Tax threshold*

Some tax experts and many undertakings recommend the reassessment with a tendency to decrease the VAT threshold, in order not to cut off is chain, while others do not see the VAT threshold as a problem, but rather emphasize the improvement of the tax administration. The Profit Tax threshold, for purposes of its gradual application depending on whether being a large/small enterprise, should guarantee a fair treatment of taxpayers and avoid creating room for tax evasion. Meanwhile, the attention must be focused on simplifying the procedures for payments in tax and customs offices, the usage level and efficiency of tax register machines (in tourism, agriculture, etc.), the analysis and registration of losses or even the income tax, applicable depending on the professions. Escalation of penalties or even fines, and the perception of corruption associated with them, call for a deeper analysis, including the respective costs and benefits.

b) *Incentives that may accompany the fight against informality*

- Fiscal facilities for new entrepreneurships, those who re-invest a certain amount of their profits, entrepreneurships that employ a certain number of staff and entrepreneurships that operate in underdeveloped areas. The possibility of applying differentiated taxes in certain areas of the country must be looked into.
- Assessment of the efficiency of reference prices in customs, whether they are cause for contraband and evasion. Removal of reference prices is identified by the entrepreneurships as a potential incentive, such as, for example, from the importers of tiles, construction materials, coatings, etc.
- Clear incentives for the consumer related to taking the tax coupon, while enabling direct benefits from the declaration of annual income.
- The subsidy scheme in agriculture does not sufficiently incentivize formalization because it reaches only a limited category of farmers. The strengthening of the current scheme to incentivize through VAT reimbursement is suggested. The situation is more complicated and requires a deeper analysis in the wine sector, due to the large number of needed licences and permits, or in the sector of medicinal plants and milk processing.

Recommendation 3 – short term

Simplification of administrative bureaucracy with the aim of reducing the number and time for carrying out payments in particular for medium, small and micro businesses, and making available to the taxpayers innovative services such as online tax payment, etc. Viewed from the perspective that 90% of enterprises are micro, and the level of awareness and financial know-how among enterprises is very low, such measures would facilitate the tax compliance of this category.

Recommendation 4 – short-term

Enhancement of administration accountability in order to respond to the formalization reform through:

- a) investment transparency and accelerating the modernisation of information technology such as the well-functioning of the new tax system and risk system, which must precede the field actions, thus increasing the public confidence.
- b) specialized training sessions for the employees, especially those of the tax and customs administration.
- c) fast and effective appeal and advisory structures, and the preparation of manuals and commentaries for inspectors and enterprises regarding their reciprocal rights and duties.

c) A Regulatory System, Supportive to Formalization

Recommendation 5 – mid-term

The formalization reform must also have a goal to relieve the administrative burden for taxpayers, by promoting compliance with the tax system and the regulatory system as well as a higher standard of the final goods and services in the following aspects:

- a) Improvement of public institutions' infrastructure in relation to application of online systems and enhancing the exchange of information in real time. More concretely, the online coordination of State Inspectors and online exchange of information on Inspections as well as coordinated registration of private entities, with institutions such as the NRC, Tax Office, Employment Office and other Inspectorates (e.g. NFA, the Environment Inspectorate, etc.) or the General Directorate of Customs for for imports of raw materials (necessary for agrobusiness).
- b) Accurate categorization of professions both from legal and administrative aspects and their harmonization through NRC, Tax Office and INSTAT, to avoid confusion among tax payers and the difference in treating by tax administration, for instance, free lance professions.
- c) Unification of investigation and inspection units of the Tax Administration and Custom Administration in order to enable an effective control and detection of cases of tax avoidance, but also exchange of information and expertise.
- d) Recognition of the Technological Card for certain operations, especially in agrobusiness and coordination with the Tax Administration for the acknowledgement of the respective losses.
- e) Clear legal definition of wholesale and retail markets, in order to prevent switching from a certain status to another. Clear definition of the street-trader. Redefinition of the functions of inspection to such businesses by central and local institutions.
- f) Enabling the connection between the NUIS of the farmer to the electronic land registry and electronic animals' registry, etc.
- g) Formalization in agriculture must be preceded by the completion of the land registration, formalization of the land market, registration of the farms and livestock and improvement of official statistics.

- h) Enhancement of the coordinating capacities and functions of responsible institutions subordinate to the Ministry of Agriculture, Rural Development and Water Administration, in charge of imposing and monitoring the quality on value added approach in agro-industry starting from raw materials, assisting ones, up to the final product.

Technological Charts and Standards in Processing Milk

It is necessary to prepare/update, approve and implement some technological charts and standards. The process should include Ministry of Agriculture, Rural Development and Water Administration, ASU, Centre of Transferring Agricultural Technology, Veterinary Authorities, artificial insemination operators, input suppliers, pertinent NGO, etc. Some of the main technological charts shall include:

1. Construction of garnerers
2. Construction of fodder storehouses
3. Construction of mechanical devices warehouse
4. Construction of areas for processing milk.
5. Milk standards and milk processing standards
6. Expected losses from technological processes
7. Remains of veterinary medicaments

It is recommended that every branch of farm sector and sub-products of milk should issue a list of products, services, operations which require intervention for preparation/updating technological charts and standards for implementation, followed by proposals prepared by working groups of experts.

- d) Access to finance and improvement of financial services - an incentive in formalization.**

Recommendation 6 – short term

- a) Further cooperation with banking financial institutions and the non-bank financial institutions should be considered in the context of the formalization strategy and its expected benefits. For instance, the micro-credit institutions may play an important role in the reduction of informal economy, especially in rural areas where they enjoy large access.
- b) The recent changes, regarding channelling payments to farmers by the collectors through the banking system require a deeper analyses on the threshold of and the category of farmers who shall pass through the banking system, in the context where the rural population has very limited access to the banking system and such services entail considerable costs.
- c) Encouraging banking transactions and electronic payments such as through PoS, especially in trade and services. Implementation by the tax administration of the existing legal provisions, which do not pose the obligation to use the tax registration machines when

the taxpayer does not collect any cash, shall help small enterprises by reducing costs. For this purpose, the Ministry of Finance and the General Directorate of Taxation must unify their interpretations regarding such cases.

e) Consultation, Transparency and Education

Recommendation 7 – short term

- Implementation of the Law No. 146/2014 “On Public Notification and Consultation” regulating the process of public and prior notification and consultation of bills, draft national and local strategic documents, and policies with a significant public interest.

Recommendation 8 – mid-term

- Grant and crediting programs by the Government and Donors may play a key role in awareness raising and consultation on the formalization of certain private sector groups, such as supporting the Government's action during the first 2-3 years. More concretely it is suggested that the governmental subsidiary schemes on the milk sector shall be based on the volume and quality of products.
- In agriculture, it is suggested to increase the consultation and awareness-raising to the farmers. To be considered the establishment of an intermediate unit for the provision of assistance and information to farmers regarding the registration and the benefits of formalization, upon the assistance of the donors and the Government.
- Organizing targeted awareness-raising campaigns in cooperation with the business associations or other private partners such as micro-financing institutions in rural areas.
- Publicly appreciating regular businesses over years or also by exchanging experiences with other businesses, through Tax Administration.