

SUMMARY REPORT

Proposals for the Improvement of the Tax Audit Process: *An analysis in the framework of Improving Business Climate in Albania*

September 21st, 2015

This Paper aims to analyze tax audit in Albania, to identify gaps as well as to provide some practical recommendations for enhancing its effectiveness. It considers both perspectives of taxpayers and tax administration. The Paper is a summary of a thorough analysis prepared by the Secretariat¹.

Simultaneously, this analysis is initiated in the framework of the Government's reform on improving tax system in Albania. It also comes at the moment when the Government has started a large campaign against informality and amid debates raised among politicians, media and businesses. In this context, it will aim to constructively assist the tax reform process as one of the main pillars in improving business climate in Albania.

Various documents from official sources and stakeholders have been consulted, including but not limited to FIAA Survey on "Business Environment in Albania" (2015), IFC Survey on "Cost of Tax Compliance in Albania" (2013), Albanian Tourism Association (ATA) Survey, OECD guidelines, IMF reports etc. For the purpose of this assessment, interviews have been also organized with relevant stakeholders. Furthermore, a specific Survey on Tax Inspection was launched online by the Secretariat in cooperation with several business associations and chambers of commerce and industry, aiming to receive the taxpayers' opinion. The Survey was completed anonymously entirely online by 110 companies, where 78% of the respondents were medium and large companies, while about 22% were of foreign ownership.

The findings have shown that the companies, acknowledge the significant measures recently undertaken by the Government, such as the new VAT Law and Customs Code, new IT system, ongoing efforts for an automatic VAT reimbursement, improvement of VAT reimbursement rules and procedures, inclusion of the new audit/risk procedures according to the profile of tax liabilities with special focus on VAT (ongoing). However, there are still serious concerns related to the sustainability and clarity of the legal framework, implementation of tax procedures, and professionalism of tax administration, transparency and timely information to taxpayers on legislation changes, which may lead to corruption practices.

The main findings and recommendations resulted from the analysis are described as follows:

¹ Draft of the full report will be published on the IC website on Monday, September 28th, 2015, for further public consultation.

I. Amendments of the tax legal framework

1. ***Finding:*** According to paragraph 3.4 of GDT Regulation No.1 dated 28.04.2009 “On Selection Procedures for Tax Audit”, the procedure for tax audit selection of businesses includes a ratio of 60 percent of companies selected automatically from the system and 40 percent as proposed by Regional Tax Offices (based on the risk indices of the taxpayer). The basic factors for assessing business risk and vulnerability to evasion ***are not*** known by the businesses yet. The current system apparently leaves room for discretionary abusive interpretations on the selection of those businesses that undergo a tax audit. In addition, it is focused mainly to VAT risks indicators. Based on the findings of the Survey, there has been a high indication of tax audits performed by tax administration during the period 2013-2015, where about 93% of large companies responded that they have been subject to full audits during this period, thus questioning the efficiency of the selection process and the proper use of limited resources by tax administration.

Recommendations:

- 1) ***Short term:*** It is suggested to publish the baseline criteria based on which it is determined the risk of the business. The criteria 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;
 - 2) ***Medium term:*** 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 System could focus not only on VAT but also on other types of taxes (i.e. Tax on Income and Profit) for the automatic selection. Despite the current efforts undertaken, GDT needs to consider and ***publish*** immediately a plan of action in this direction for the next 3 years.
2. ***Finding:*** The existing Law “On Tax Procedures”, does not ***set up a timeframe*** for sending notifications to the taxpayers prior to the Tax Audit.

Recommendation: It is recommended that the abovementioned law should clearly state a timeframe of 10 calendar days for advance notification of the taxpayer, except for the cases of in-site inspections. This notification is deemed to provide to the businesses the sufficient time to plan their resources which will be put at disposal during the tax audit. In addition, it should be considered to include more details in the advance notification such as: the taxpayer’s documentation to be audited, persons to be interviewed and other papers or information that should be prepared in advance from the taxpayer.

3. ***Finding:*** The current procedure under which the Regional Tax Directorate (RTD) appeals in the court against the Tax Appeal Directorate (TAD), it is not in line with the “good

practices” principle to be applied by the tax administration, considering that both operate under the same jurisdiction of the Ministry of Finance. It is not the first time that this issue has been raised as a real problem even by the businesses. The Secretariat took note of all the previous and current comments provided to the Government. However, the business still insists on a lack of the efficiency of the procedure as it is currently operating.

Recommendations:

- 1) The decisions of TAD as the upper administrative unit to decide on Appeal cases, should be automatically binding to the RTDs. The RTDs’ right to appeal against TAD decision needs to be reconsidered and may be removed;
 - 2) The amendments which can effectively increase TAD independence and separation of its function from the structure of General Directorate of Taxes (GDT) should be considered as a priority.
4. ***Finding:*** The Amendment (2014) to the Law “On Tax Procedures” through which it was added the “*Bank Guarantee*” as an alternative means to initiate the Appeal procedures has been positively welcomed by the business. However, access to Appeal is still considered by the businesses as difficult to be initiated. The alternative of paying in advance to the Appeal 100% of the tax due remains a strong barrier to the appealing process.

Recommendation: Alternatively to the “*Bank Guarantee*” as provided by the Law, 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.

5. ***Finding:*** Limited role and competences of the Taxpayer’s Advocate (TA).

Recommendations:

- 1) Reconsider to enlarge the role of TA in the Tax Audit especially in the *re-audit procedures*. TA should be included in the re-audit procedures, by making mandatory for the Tax Administration to get prior approval of the TA before authorizing a re-audit;
- 2) Re-structuring of the TA Office to increase its independence, area of interaction and partnership with the taxpayers. One option is to consider TA Office as a structure within Ministry of Finance.

II. Tax Administration

6. ***Finding:*** The professionalism and capacities of inspectors remain a real and high concern by the business in particular on the expertise level and logistic aspects. The Survey indicates that in particular sectors such as tourism, banking and telecommunications there is a need for concrete improvements to address the issue.

Recommendations:

- 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 the improvement of capacities and resources of inspectors, in particular of those working in TAD and VIP Taxpayers Directorate through annual training sessions. Whenever annual trainings have been performed, this should be published in the GDT annual reports as a means to build trust to taxpayers;
 - 2) It is encouraging that incentive packages for staff motivation have been mentioned in the Law No.9920 dated 19.05.2008 with the amendments of 2014, but follow up on the endorsement is required;
 - 3) 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.
7. ***Finding:*** Although GDT publishes its Technical Decisions and TAD has recently started to publish some of its own decisions, there are still 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.

Recommendations:

- 1) GDT 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) GDT 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.

III. Transparency and Awareness

8. ***Finding:*** According to the Survey performed by the Secretariat, the GDT website remains the main source of information, assistance and knowledge for taxpayers and other institutions related to the tax system in Albania. Although its usefulness and efficiency is highly appreciated by the survey responders, small and medium companies still reported difficulties in accessing and finding the relevant clarifications in the website.

Recommendations:

- 1) Publication of GDT and TAD annual reports as a 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;

- 5) Simple manuals and informing sessions with practical tips for small and medium companies might be developed by GDT.
9. **Finding:** Frequent changes to the tax legal framework. It is significant to mention that since its launch on 19 May 2008, Law No.9920 “On Tax Procedures” has been amended 11 times, while its 12th (twelfth) amendment has been recently approved by the Government and it will soon enter into force. In addition, limited consultation and information to the taxpayers about the changes on tax legislation remain a real issue (e.g.12th amendment mentioned above was not subject to prior consultation with stakeholders).

Recommendations:

- 1) Stabilization of the fiscal package and tax procedures through public consultation in order to be absorbed in advance by the business in their investments plans;
- 2) The development and publication of an annual communication programme with business associations diversified by sectors on tax legislation and procedures;
- 3) GDT 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.