

Tax Alert

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Decision amending the Instruction on Tax Procedures

A new decision amending Instruction No. 24 dated 2 September 2008 “On Tax Procedures in the Republic of Albania”, as amended, became effective on **1 December 2015**. The amended Instruction is in line with the changes made to Law No. 9920 dated 19 May 2008 “On Tax Procedures in the Republic of Albania”, as provided in the PwC Tax Alert dated November 2015.

We list below those changes in the Instruction supplementing prior changes in the Law. For the other amendments, please refer to our Tax Alert dated November 2015.

Tax Certificates

If the taxpayer’s financial statements and tax declarations are certified as compliant with the tax legislation by certified audit companies, the tax administration includes this as a parameter in the taxpayer’s risk analysis for tax inspection purposes. The new decision clarifies the procedures, criteria and list of audit companies eligible to provide certification.

Benefits and general provisions

- Tax certificates will be included as an element in the analysis of taxpayer risk in the process of selecting taxpayers for tax inspections.
- Certified tax declarations will be the object of inspections by the tax administration as per the regular tax procedures outlined in the legislation.
- Certification is based on the taxpayer’s free will.

Object of activity and timeline

- The following taxes will be subject to certification:
 - The corporate income tax declaration;
 - Simplified small business income declaration;
 - Monthly value added tax declaration.
- Quality Control: Quality control of audit company tax declaration certification must be performed based on the Albanian Institute of the Certified Public Accountants (IEKA) regulations.
- Deadlines: Certificates submitted electronically no later than the last day of the month during which the report was issued by the audit company.

Selection of audit companies that can issue certificates

- The Ministry of Finance is to publish during December 2015 the competition procedure for audit companies. The companies must:
 - be legal audit companies registered and listed in the IEKA Public Certified Public Accountants register;
 - have at least ten years of experience in the field of audit, accounting and tax consulting;
 - have no less than one legal auditor in the role of engagement partner with work experience of at least five years.
- The right to apply is also granted to joint operations of two audit companies which on their own do not fulfil the above conditions.
- The Selection Committee is determined by the Minister of Finance. The Selection Committee must announce the list of the audit companies within 30 days as of the announcement of the procedure.
- The listing will be performed for a four-year period.
- Audit companies could be removed from the list of companies if:
 - the work performed has considerable shortfalls in the implementation of the procedures.
 - the audit company report contains intentional mistakes in order to avoid tax obligations.
 - the audit company report contains mistakes with considerable impact on the value of the additional tax being calculated.

Rules and obligations for audit companies

- Statute of limitation for tax certification services.
 - Tax certifiers must not perform the certification of the tax declarations of the same taxpayer for the same tax for a period of longer than four consecutive years.
 - After a one year pause, the tax certifier can begin certifying again for another four years.
- Restrictions on the provision of other services:
 - The listed audit companies cannot perform the service of verifying and certifying the tax declarations of a taxpayer if their employees or their related parties, as defined in the IEKA Code of Ethics, have provided the taxpayer with accounting services, fiscal consulting or other similar services related to the preparation of the tax declarations.
- Obligations for audit companies:
 - Audit companies have to certify whether the tax declarations prepared by the taxpayer are in accordance with the legal provisions, accounting principles and standards, and certify them in accordance with the tax legislation.

- Audit companies are responsible for the process from verification all the way to the certification.
- Penalties and fines for audit companies:
 - If a mistake occurs during verification and certification, the audit company which certified the documents will be held jointly and proportionally responsible with the respective taxpayer in relation to the tax obligations, within the legal limits of responsibility for verification and certification.

Regulations for Wholesale Traders

The decision amending the Instruction provides further clarification regarding the restrictions to apply to wholesale traders selling to individuals with fiscal coupons.

For the purposes of the legislation, a wholesale trader is defined as any taxable person performing the economic activity of supply of wholesale goods, independently of whether it is a taxable person subject to value added tax and income tax, a simplified income tax payer or small business tax payer.

From the moment the new legislation is enacted until 31 March 2016, wholesale traders selling to individuals with fiscal coupons need to make sure that these sales do not exceed 10% of the taxable value (net of VAT) of the goods sold in the same tax period of the previous year. From 1 April 2016, wholesale traders must not perform sales with fiscal coupons to individuals.

The instruction further specifies that for wholesale traders who set up their activity only this year, sales to individuals with fiscal coupons must not exceed 10% of their sales for that particular month.

For failure to issue a fiscal invoice, wholesale traders are penalised with 100% of the tax liability and interest, ALL 10,000,000 fine and a tax reassessment of revenues for the previous six months. The instruction does provide, however, that the penalty will not be applied if the accounting inventory is up to 1% higher than the physical inventory. The instruction explains this aspect by stating that differences of this nature can occur due to accidental losses or theft by company employees.

Details Regarding the Application of New Regulations

The following additional details are provided concerning the implementation of the tax regulations:

- For taxable persons who engage in coffee-bar, restaurant or dining halls, where food and drinks are consumed, economic activities, fiscal coupons must be issued for each order placed.
- In order to assess the real wage of a taxpayer's employees, the tax authorities apply the alternative assessment methods based on article 72 of the Law on Tax Procedures.

Voluntary Disclosure

In an attempt to encourage voluntary declarations and improve the tax system, the tax administration will not pursue with a criminal indictment any taxpayer who self-corrects and submits a tax declaration for any inaccuracy which might have been purposefully erroneously declared in prior periods.

This provision will be particularly valid for goods stored by taxpayers for which they do not possess a fiscal invoice. Such taxpayers will have the opportunity to issue an “Invoice issued by the Buyer” by 31 December 2015 and face no further penalties or criminal indictments. The procedures for self-declaring goods are detailed through this decision and contain the following provisions:

Goods stored without a fiscal invoice

- The taxpayer must declare the goods by issuing the respective format of the fiscal invoice which is required based on his respective tax obligations, VAT fiscal invoice or simplified fiscal invoice.
- VAT must not be included or calculated in the invoice.
- The fiscal invoice in this case will not be sufficient to justify deductible expenses for taxpayers for the purpose of calculating corporate income tax.
- It is obligatory to describe in the invoice the type and quantity of all the goods being self-declared.
- If there are multiple goods, the self-declaration can be performed through multiple invoices, which all have to be issued on the same date.
- The self-declaration of goods stored without fiscal invoice as per the rules of this procedure is allowed only once, by 31 December 2015. The declaration must be performed electronically to the tax authorities and must be uploaded by the taxpayer into the e-filing system no later than three days as of the date when the invoice was issued, but in all cases by 31 December 2015.

Correction of previous tax declarations

- If a taxpayer encounters any difficulties in calculating the interest or performing the self-declaration procedure, the taxpayer must send an official notice to the regional tax directorate where it is registered in order to perform the self-correction.
- The regional tax directorate must issue a response within four working days as of receiving the request. As of the date when the request for reassessment is received from the taxpayer, the Regional Tax Directorate does not undertake any inspections of the taxpayer.

[Source: Decision No. 31 dated 27 November 2015, issued by the Minister of Finance, Official Gazette No. 205 published on 1 December 2015.]