

# Tax Alert

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## *Law on Tax Procedures*

Amendments to the Law on Tax Procedures, effective as of 1 January, include:

- The use of reference prices as a basis for alternative valuations by the tax authorities.
- Reference prices for rent, wages, goods and services are used by the tax authorities.
- The statute of limitation for requesting a tax reimbursement is limited to five years.
- In the event that the receipt date of tax notification from the tax authorities cannot be determined, the notification is considered as received by the taxpayer within 10 days of the mailing date (or from the delivery of an electronic message).
- When a tax reimbursement is requested and a tax inspection is carried out with no penalties, the reimbursement should be made within five days of the request. If this does not occur, the taxpayer has the right not to pay any tax liabilities up to the amount of the reimbursement requested.
- A deadline of a minimum of six months (but no less than the time required for the tax authorities to reach a final decision) for bank guarantees is required from taxpayers in order to appeal against Appeal Directorate decisions.
- The deadline for Tax Appeal Directorate decisions regarding appeals from taxpayers has been decreased from 90 to 60 days.
- The penalty for the delayed payment of tax obligations is 0.06% of the amount of the unpaid liability for each day, up to a maximum of 365 calendar days (previously 5% of the unpaid liability for each month late, but not more than 25%).
- The penalty for the incorrect filing of a tax return is also 0.06% of the amount of the unpaid obligation for each day, up to a maximum of 365 calendar days.
- The repeated non-declaration of employees after the application of an administrative penalty, performing economic activity without registration and the non-installment of fiscal devices is considered fiscal evasion.

- In cases where banks do not freeze the requested funds, they are liable for 0.2% of the liability for each day, but no less than ALL 100,000 per day.

In cases where the reverse-charge mechanism is not applied, the penalties are as follows:

- In cases where the non-issuance of the invoice does not lead to VAT implications, the liability is ALL 50,000 for each breach and ALL 10,000 for small businesses.
- In cases where the non-issuance of the invoice leads to VAT implications, a 100% penalty is imposed.
- In cases where an invoice with the incorrect VAT amount has been issued, the taxpayer is liable for 50% of the obligation.
- In cases of undeclared issued invoices, taxpayers are liable to pay 0.06% of the amount of the unpaid liability for each day, up to a maximum of 365 calendar days.

*[Source: Law No. 164/2014 dated 30 December 2014, issued by the Ministry of Finance, Official Gazette No. 198 published on 30 December 2014.]*

## *Instruction on Tax Procedures*

Amendments to the Tax Procedures legislation regarding the new electronic submissions and filing in the tax system are outlined below:

As of 22 December 2014, all correspondence with the tax authorities can be made electronically at the taxpayer's request. For such cases, the taxpayer should be registered as an electronic tax communication system user.

The taxpayer is required to inform the tax administration, electronically or through an official letter, of any address it utilises to perform its economic activities, as well as of the address of its headquarters if the taxpayer intends to use it to communicate with the tax administration. In addition, the taxpayer is required to inform the tax administration at the moment it registers as a user of the electronic tax communication system and should communicate its email addresses, or the email addresses of its representatives, by specifying which email address the taxpayer intends to use for communicating with the tax administration. If the taxpayer does not provide a valid email address to the tax administration, all tax administration notifications will be communicated to the email address generated by the electronic tax communication system, as long as the taxpayer is registered as a user of this tax system.

Any assessment, notification, decision or official communication by the tax administration to be sent to the taxpayer electronically will be considered to be as valid as any other method of communication. The day of receipt of the electronic communication is the moment when the electronic documentation is sent to (or arrives at) the email address provided by the taxpayer or the email address generated by the electronic tax communication system.

In addition, farmers intending to benefit from special agricultural schemes are required to be registered with the tax authorities.

- A taxpayer automatically changes status from active to inactive if all tax returns are filed with no business activity for a period of 12 consecutive months. This did not previously occur in practice. In order to change the taxpayer from inactive to active, two methods can be followed:

1. by request of the taxpayer; or
  2. by the tax authorities where there is evidence of activity.
- Due to the changes in the information system and the process of filing returns, in cases of un-submitted returns for financial periods prior to 1 December 2014, returns have to be submitted in the new form system, except for social and health contribution returns and personal income tax returns.
  - Extensions for filing returns can no longer be requested by sending a letter to the tax authorities. In addition, the possibility to amend a specific return within a period of 12 months has been limited to a maximum of a one-time change for each return.
  - In cases where taxpayers do not submit their returns within the legal deadline, a “reminder letter” is sent by the tax authorities within five calendar days. The reminder letter allows for a 10-day deadline for filing the missing return. If a taxpayer fails to submit the return within those 10 days, the tax authorities have the right to assess and notify the taxpayer of the tax liabilities, using the form provided in the Instruction.
  - The only form of tax liability payment accepted from banks is the relevant payment order generated by the information tax system. Payments can also be processed electronically according to the agreements made between different banks and the tax authorities.
  - In cases where a taxpayer cannot pay the full amount of its tax liabilities for whatever reason, the order in which the obligations must be paid has been amended as follows:
    1. compulsory health contributions;
    2. compulsory health contributions of the employees;
    3. additional compulsory health contributions of the employees;
    4. compulsory health contributions of the employer;
    5. taxes;
    6. interest;
    7. penalties;
    8. administrative costs.

The above order is also used in cases where the tax credit balance of the taxpayer is transferred to cover unpaid liabilities.

*[Source: Instruction No. 26 dated 16 December 2014, issued by the Ministry of Finance, Official Gazette No. 193 published on 22 December 2014.]*

## *Law on Income Tax*

### *Law on CIT*

As of 1 January 2015 the following amendments are applicable:

- Withholding tax dividends, interest, rent and sale of immovable property have been increased from 10% to 15%.
- The transfer of the ownership rights on immovable property, land and buildings is taxed at 15% of the realised profit.
- Voluntary contributions and the taxes paid on buildings are no longer considered deductible expenses for individual tax purposes.

- Contributions paid to voluntary pension funds are exempt from income tax.
- The level of field losses, scraps and damages (during production), storage and transportation will be established by a Decision of the Council of Ministers.
- A new annual personal income declaration form has been published, applicable as of December 2014.

The following amendments have been provided regarding depreciation and amortisation rates:

- In cases where the value of the asset at the beginning of the financial year is less than 3% of the historical cost, the residual value is considered a fully deductible expense for the period.
- For the categories of computers, information systems, software, and other assets of the activity, the depreciation rates continue to be 25% and 20% respectively. The method of depreciation is clarified, however, as being through the Net Book Value. In cases where the asset's Net Book Value at the beginning of the financial year is less than 10% of the historical amount, the value is considered a fully deductible expense.

*[Source: Law No. 156/2014, issued by the Ministry of Finance, Official Gazette No. 195 published on 24 December 2014.]*

## *Law on Simplified Income Tax on Small Businesses*

As of 16 December 2015, taxpayers with a profit of between ALL 2 to 8 million are subject to 7.5% simplified income tax, provided that the amount of tax liability is not less than ALL 25,000 per year.

Prepayments of the simplified income tax have also been changed and the method of calculation amended. Businesses registered in the second half of the year have to make the required payments of the simplified income tax by 20 December of that year.

The procedures for the payment of the simplified income tax have also been changed. Such payments have to be performed electronically. Taxpayers have to print an order payment and present the new forms to the bank to comply with the. In addition, through a written request to the Regional Tax Directorate, taxpayer can obtain the "Tax stamp" verifying that the CIT prepayments have been made.

*[Source: Instruction No. 25 dated 16 December 2014, issued by the Ministry of Finance, Official Gazette No. 193 published on 22 December 2014]*

## *Law on VAT*

As of 1 January 2015 the new Law on Value Added Tax is effective, with the major changes having been mentioned in the special issue tax alert "On Value Added Tax". As such, Law No. 7928 dated 27 April 1995 and any bylaws or instructions issued for its implementation have been abolished.

Pursuant to the new Law on VAT, guidelines have been provided regarding the provisions of the law on the following items:

- The criteria for the exclusion of non-profit organisations from VAT and the procedure of application for their exclusion.
- The right to apply VAT for rental of buildings is also detailed by providing the method of and regulations required for applications. Explanatory provisions are offered for the right to credit VAT from the rental of buildings.
- Detailed provisions on the categories of operators that are included in the active processing regime are also provided. If the operator has not performed active processing for three years as of the moment the permit was granted, they have to pay the VAT liabilities that were exempted.
- The limit for VAT registration has been set at ALL 5 million per calendar year, with a few exceptions for people exercising economic activity as: lawyers, doctors, dentists, nurses, veterinary surgeons, economists, engineers, etc. The VAT registration limit for such people is zero, though all must be registered for VAT.
- The details are provided on the criteria that need to be fulfilled in order for the import of equipment and machinery for investment can be considered as excluded from VAT.
- Taxable exporters with zero risk that fulfil a list of conditions and taxable persons that export goods whose value for which the reimbursement is required does not surpass more than 60% of the total value of sales, benefit from VAT reimbursement.

The new VAT instruction to clarify further the application of the new VAT law is currently being discussed.

*[Source: Decision No. 953 dated 29 December 2014, issued by the Ministry of Finance, Official Gazette No. 200 published on 31 December 2014.]*

## *Instruction on Social and Health Contributions*

A new instruction has been issued that abolishes the previous instruction and all bylaws related to it, effective as of 1 January 2015.

- The amendments provided in this instruction implicitly explain that all declarations and filing of forms have to be performed electronically, and it specifies that the forms can be uploaded via excel spreadsheets, which was previously not possible.
- It also provides clearer explanations of the categories of employees. These are not a new addition to the legislation, but the criteria for entry in the 31 various categories are detailed further in the new instruction.
- It is defined that working time below 87 hours per month classifies as part-time work and that the social and health contributions for part-time employees must be calculated on the monthly gross salary, but no less than the minimum national wage. This was previously the case for full-time employees, but it was not previously stated specifically for part-time employees.
- The deadline for declaring an administrator for a newly registered company is extended from one day prior to starting work to two days after the company registration.

*[Source: Instruction No. 23 dated 9 December 2014, issued by the Ministry of Finance, Official Gazette No. 186 published on 10 December 2014.]*

## Law on Excise

As of November 2014, the following amendments have been provided for the Law on Excise:

- For initiatives aimed at increasing the level of excise tax, the amount of imports of excise goods cannot be higher than 5% (previously 20%) of the monthly average in the previous year of imports from every registered operator in the Republic of Albania.
- The minimum penalty applicable of at least ALL 1,000,000 for all penalties for incorrect payment of excise duty or incorrect declaration of excise goods has been removed.
- Bio-carbons used in the transport sector are subject to a special fiscal treatment in order to offer them a competitive advantage and will be taxed with 0% excise up to 2018.

*[Source: Law No. 142/2014, issued by the Ministry of Finance, Official Gazette No. 174 published on 14 November 2014; and Law No. 143/2014, issued by the Ministry of Finance, Official Gazette No. 175 published on 18 November 2014.]*

Excise rates on cigarettes have been amended as of 1 January 2015. For cigarettes containing tobacco, the excise duty is now ALL 5500 / 100 pieces (previously ALL 5000 / 1000 pieces), then ALL 6000 / 1000 pieces as of 1 January 2016 and ALL 6500 / 1000 pieces as of 1 January 2017. Excise rates for other refined tobacco and tobacco substitutes are ALL 4400 / kg as of 1 January 2015 and ALL 5100 / kg as of 1 January 2016. Further details can be found in issue 1 of our January 2014 Tax Alert and also in Annex 1 of Law No. 61/2012 dated 24 May 2012 “On excise tax”.

*[Source: Law No. 158/2014, issued by the Ministry of Finance, Official Gazette No. 195 published on 24 December 2014.]*

## Customs Code

As of 1 January 2015, the new Customs Code is applicable. It is based on the Regulation of the European Parliament and European Council directives and principles. As mentioned in our August Tax Alert, parts of the Customs Code were effective as of 6 September 2014, with more provisions becoming effective as of 1 January 2015. The remaining articles become effective on 1 June 2017.

*[Source: Law No. 102/2014, issued by the Ministry of Finance, Official Gazette No. 134 published on 24 August 2014.]*

In addition, the custom tariffs on the import of some farming products, including farming animals such as pigs, chickens, ducks, etc., have been reduced from their previous rates to 0%. Detailed information can be found in annex 1 of Law No.9981, dated 8 September 2008, “On the approving of the level of custom tariffs”.

*[Source: Law No. 159/2014, issued by the Ministry of Finance, Official Gazette No. 195 published on 24 December 2014.]*

## Law on Concessions

Regarding hydropower station concessions, the operator responsible for the energy is obliged to purchase the energy produced, provided that it is requested from the concessionary. The calculation method of the sale price of energy produced by hydropower stations up to 15 kw/H (previously 10 kw/H) has been changed, as described below:

- The price of sale (ALL per kw/H) = the average price of the Hungarian stock market of energy in EUR cents per kw/h x the coefficient 1.1 (if applicable) x average exchange rate EUR/ALL for the year.

*[Source: Decision No. 817 dated 26 November 2014, issued by the Ministry of Finance, Official Gazette No. 188 published on 12 December 2014.]*

## National Taxes

As of 1 January 2015, the following amendments to Law No. 9975, dated 28 July 2008, "On National Taxes", and its related Instruction No. 26, dated 4 September 2008, are effective:

- The monthly declaration of national taxes, national tariffs and royalty tax on mining should be performed electronically through the official website of the General Tax Directorate no later than the fifteenth day of the month following the taxable period. Any respective payment of such taxes should also be made by the same date.
- Taxpayers subject to national taxes and tariffs, or their agents, should submit the electronic declaration of national taxes, national tariffs and royalty tax on mining, even if they result in no national tax and tariff liabilities for the period.
- Circulation Tax on both petrol and diesel has been increased from ALL 17 / Litre to ALL 27 / Litre.
- Royalty tax on the metallic mineral content of mineral by-products has been decreased to 2/3 of the current rates in Annex 2, "First Group (I) Metallic Minerals" of the Law "On National Taxes".
- The tax on issued premiums is 3% of the sum of the principal value, except for premiums, health insurance and travel insurance.

*[Source: Instruction No. 27 dated 16 December 2014, issued by the Ministry of Finance, Official Gazette No. 193 published on 22 December 2014; and Law No. 157/2014, issued by the Ministry of Finance, Official Gazette No. 195 published on 24 December 2014.]*

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