

Reformation of Tax Procedures along the European Integration Process

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Abstract

Approximation of the Albanian legislation with the *acquis communautaire* is accompanied by deep reforms and, consequently, by reforms of relations accompanying the relevant laws. In this context, one of the European Union recommendations for the Albanian government was the country’s tax reform. This reform was accompanied by the abrogation of Law no 8560, of 22 December 1999 “On Tax Procedures in the Republic of Albania” and the approval of the new Law No. 9920, of 19 May 2008 “On Tax Procedures in the Republic of Albania”. The purpose of this Law is to reduce informal economy and to improve the business climate in the country. By analyzing the legal amendments in this tax domain, we shall see reformation of tax procedures, evolution and the tax appeal process in Albania. By way of providing details on main issues, we shall focus on the benefits the changed tax procedures have yielded to the taxpayer and to the protection the law provides to the taxpayers against the illegal tax administration actions. Amongst the issues treated in this article is also the impact of such procedures in the fight against fiscal evasion.

Keywords: tax procedure, tax administration, anti-corruption internal investigation, Taxpayers’ Advocate, Tax Council.

Introduction

The European Communities Commission’s¹ “2009 Progress Report for Albania” highlights that the reform in the tax administration has improved its performance, especially at the central level. The new structure of the General Tax Directorate (GTD) is based on administrative functions, rather than only focusing on the tax collection and control.

It is evident that the main merit for Albania’s progress towards the EU in the tax field is due to the approval of the new law “On Tax Procedures”. This Law has fully reformed all the applicable tax procedures in Albania, has reformed the tax administration, procedures for tax appeals, declaration of tax obligations from the taxpayer, as well as the relationships that might be established between the tax administration and the Albanian taxpayers.

¹ European Community Commission, Brussels, 14 October 2009; Sec (2009) 1337; working document of the Commission staff; “2009 Progress Report for Albania”; which accompanies the Commission Communication for the European Parliament and the Council; Development Strategy and Main Challenges 2009-2010; Com (2009) 533; page 21.

Methodology

Approximation of the Albanian legislation with the *acquis communautaire* is an up-to-date challenge involving wide reforms in the taxation and tax field. In this context, the approval of the new Law No. 9920, of 19 May 2008 “On Tax Procedures in the Republic of Albania” can be considered as one of the major achievements in the Albanian tax policies. The Law has made important amendments in the organization of the tax administration. Through a process of analyzing such changes, I shall try to focus on the strengths and weaknesses of such changes.

This article is focused not only on the analysis of the novelties of the legislation, but also on offering a comparative approach between this law and the previous tax legislation, trying to put to the fore the evolution of these procedures towards the *acquis* norms. The establishment of new structures, part of the state administration, in service and in protection of the taxpayers, shall be one of the highlights of the study.

In this article, *inter alia*, I shall focus mainly on the tax appeal procedures’ reforms, coming up with conclusions and recommendations deriving from the analysis on the legal provisions. This is a theoretical study on expectancy of legal changes in the tax administration domain.

Overview on Law No. 9920, of 19 May 2008 “On Tax Procedures in the Republic of Albania”

This Law can be considered as the foundation for building a modern, effective and honest tax administration in Albania. It introduces fundamental changes on the way how taxes are collected and administered in Albania, finally resigning from irregular and arbitrary practices, introducing the self-declaration principle and highlighting a fair and transparent relationship between the tax administration and the taxpayers. The Law is based on the slogan “pay the appropriate amount in the appropriate time!” In such a way, the law ensures a similar treatment for all the taxpayers. This is a great benefit for the taxpayers, because it ensures an honest competition in the market.

This law provides for a functional structure of tax administration, modern practices of tax administration and self-assessment by the taxpayer. Amongst the main aims of this law I can mention: voluntary encouragement and observing of tax legislation, reduction of the tax administration burden and of the space for competition through a new functional structure and restructuring in management, reduction of informal economy through modern practices, etc.

Compared to the previous law – that is the 1999 law, the language of the new law is clearer and better refined. Important concepts on tax procedures and obligations are developed, in an extended manner, providing possibilities for each interested person to clearly be informed about tax procedures, tax administration or other tax appeal procedures, despite his/her education background.

The provisions of this Law are binding for:

- the taxpayers;
- the tax administration;
- the tax agents;
- the income tax retention agents
- any other person, as specified by the tax legislation.

While the 1999 law spoke of the meaning of the tax system, in the 2008 law this concept is replaced by tax legislation². Apart from the tax laws and the legal acts issued in their implementation, the international agreements ratified by the Assembly are considered to be part of the tax legislation. But, can all the international agreements ratified by the Assembly be part of the tax legislation of a country? I think the answer is no. I think that not all the international agreements ratified by the Assembly of the Republic of Albania can be part of the tax legislation. Probably the law needs to be more specific in this regard, separating in the entirety of international agreements only those agreements that are related with tax obligations – that is the tax agreements.

Another issue that is worth mentioning as a novelty of the new law on tax procedures is the taxpayer's residence. The 1999 law does not give a definition of this term, whereas the new law contains a clear concept about it in the case of a physical person and in the case of the legal person.

Taking into account the fact that tax residence is the place where the taxpayer has full tax responsibilities regarding statement of incomes, payments and assets that are subject to taxes based on the Albanian legislation in force, the law provides that an individual is called a resident in the Republic of Albania when³:

- His/her domicile is in the Republic of Albania, in the understanding of Article 12 of the Civil Code, that is he/she has a permanent home, has a family, has living and economic interests in Albania, despite of the fact that he/she can work for various periods of time abroad, or that he/she might have a foreign nationality;
- He/she is of Albanian nationality and exercises functions on behalf of the Republic of Albania (in embassies, consular offices, international bodies);
- When he/she stays in the territory of the Republic of Albania for a period of longer than 183 days during a tax year, either in succession or not, despite the citizenship or the country of his/her living interests. While calculating this period, relevant authorities take into consideration the physical presence, that is the arrival, leaving or holidays of such person.

² Article 3 of Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania".

³ Ibid, Article 8.

All the individuals meeting at least one of these criteria are considered Albanian tax residents.

A legal person is a resident in case he/she:

- Is registered as an Albanian legal person and his/her main office is in the territory of the Republic of Albania;
- The place of its effective management (administration) is in the Republic of Albania.

All the legal persons meeting at least one of these criteria are considered Albanian residents in the understanding of the tax law.

The commercial physical persons are considered Albanian tax residents when registered as such with the National Registration Center and when their main place of business is in Albania.

When the taxpayers fail to meet at least one of the criteria provided for in the current law, they shall be considered non-resident taxpayers.

A disputable item for both the previous and the current law is the deadline of tax agreements for eliminating double taxation. Article 10 of the abrogated laws provides specifically that the General Tax Directorate is the competent body to deal with negotiation of international agreements for eliminating cases of double taxation, while their signing and approval is made pursuant to the Law "On Signing of International Agreements and Treatments". The official opinion of the Minister of Finance is taken into consideration for every draft-law or international agreement containing tax provisions. According to the 2008 law, the competent authority for realizing negotiations is no longer the General Tax Directorate. Under the new law this competence is transposed to the Ministry of Finance⁴. The Ministry of Finance is, on a case-by-case basis, a signatory or a party in the negotiations held for all international agreements having tax effects. The signing and approval authority for these agreements is made compliant to the law "On Signing of International Agreements and Treaties".

The approval of tax provisions of either bilateral or multilateral conventions is made by the General Tax Directorate, not by the regional tax branches. The taxpayer requests for the implementation of international agreements are handled by the GTD. If the taxpayer goes to the regional tax offices asking for exclusions, fiscal facilities, residence certificates, documents or instructions related to the enforcement of international agreements concluded by Albania, such requests are submitted for examination to the General Tax Directorate. This rule is also applied for the bilateral agreements on the elimination of double taxation and prevention of fiscal evasion, concluded by Albania, and for the tax provisions such agreements might contain, like for instance: the

⁴ Article 11 of Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania".

international transport agreements, aid agreements, loan agreements, concessionaire agreements, social and health insurance agreements, etc. The regional tax directorates act according to the provisions of international agreements only when statutory and sub-statutory provisions provide for such an option, or if they receive official written replies or instructions by the General Tax Directorate⁵.

Nonetheless, let me get to the grips of the law, concentrating on its novelties, which lead tax procedures to a new stage of development, reorganizing not only the tax administration, but also taking care of the taxpayer interests to better face the tax burden. The Albanian legislation is now very close to the legislation of the other EU countries.

Tax Administration Reform

Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania" has introduced radical changes to the organization of the tax administration in Albania. First, it has delineated the principles that should lead the work of such administration, while, second, the tax administration is re-organized according to the model of tax administrations of other EU countries, third, there are more tasks and functions for the General Tax Directorate now, being the highest ranking authority for tax administration in the Republic of Albania, while the Tax Appeal Commission is replaced with the Tax Appeal Directorate.

In the administration of the tax system in the Republic of Albania, the tax administration should be guided by some principles. Some of them are⁶:

- similar and effective enforcement of the legislation by the tax administration;
- encouragement of the voluntary enforcement of tax legislation via information, education and publication of sub-statutory acts;
- cooperation with national and international tax authorities, in service of the globalization of world economies;
- encouragement of electronic activities, especially of electronic declaration and payment of the tax obligation.

As you can see, the tax administration is not entitled only to collect and administrate the tax obligations by mechanically enforcing the law, but it should be careful in equally enforcing the law for all, while trying to establish cooperation relations with the taxpayers and a good climate with the business so as to encourage voluntary payment of taxes. This is one of the ways of ensuring application of one of Wagner's principles on economics, on satisfaction from taxes⁷, which at least theoretically reduces the level of fiscal evasion.

⁵ Instruction of the Minister of Finance No. 24, of 2 September 2008 "On Tax Procedures".

⁶ Article 12 of Law no 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania".

⁷ Jelciq; B.; "Science on finance and financial law"; Prishtine 1985; p. 198-199.

Pursuant to Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania", the tax administration is composed of the central tax administration (central institution depending on the Minister of Finance) which includes:

- the General Tax Directorate
- Regional Directorates
- other component units;

as well as the local tax administration involving the tax offices, which is under the authority of local government.

Different from what was provided for in the previous law, the central tax administration is organized in directorates according to clearly-set functions. These directorates are:

- taxpayer service and education;
- tax control;
- appeal;
- collection of tax obligations and of enforcement of coercive measures;
- tax investigation;
- support functions (including finance and statistics, information technology, internal control, legal services, etc.)
- internal anti-corruption investigation⁸.

With regards to defining the tasks and functions of the General Tax Directorate, the law says that such tasks and functions are entrusted to some internal rules of procedure, which are proposed by the General Tax Directorate and are approved by the Minister of Finance⁹. I think that the law should be reconsidered in this regard. Stemming from the level of authority of the General Tax Directorate, an internal set of rules of procedures approved by this Directorate might not be a sufficient act to clearly set its functions and tasks. Let us not forget that the GTD is the highest tax authority operating all over the territory of the country, whereas the 1999 law on tax procedures dedicates a separate article on the tasks and responsibilities of the General Tax Directorate.

Tax investigation is one of the new functions of the central tax administration provided for by Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania". Structures of tax investigation are specialized investigation and enforcement units, which primary function is¹⁰:

⁸ This Directorate was established pursuant to the amendments made through Law No. 10209, of 23 December 2009. Published in the Official Journal No. 194, of 20 January 2010.

⁹ Article 16/5 of Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania".

¹⁰ Ibid, Article 105.

- to collect tax information;
- to conduct tax investigation;
- to follow-up and enforce coercive measures.

The responsibility for the unified leadership of tax investigation structures lays with the Tax Investigation Directorate at the General Tax Directorate.

The main task of the tax investigation structures and of the Tax Investigation Directorate¹¹ is the prevention, discovery and documentation with the purpose of suspending the criminal activity in the tax domain, as well as the preliminary investigation of criminal offences, provided for in Article 131 of Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania", and in Article 180-182 of the Criminal Code of the Republic of Albania.

For realizing this task, these structures can collect, process, keep, analyze, exploit and distribute information on suspected violations, either potential or factual, by taxpayers. They can also take data from legal sources, or by secret cooperation with the individuals. Secret cooperation with Albanian or foreign nationals is always done based on an agreement, upon the free will of citizens, with payment or not, maintaining, at any case, the confidentiality of the agreement or of the information.

As it can be remarked, the task the tax investigation structures should carry out is aimed at avoiding tax invasion, so as the state manages to collect the predicted amount through taxes. The tax investigation structures have replaced Tax Police¹², which, *inter alia*, was in charge of collecting and reporting the data related with non-payment of taxes by the taxpayers. Comparing the tasks of these two structures we see that tax investigation is not considered a priority task by the Tax Police, but was listed among the last tasks in the long list of functions of this police. As already highlighted above, the new law speaks of establishment of this special structure which serves as a guarantee by the state to collect taxes. It is evident that the legislation has made a considerable step forward in this regard. That said, a question that might be reasonably asked is: while the new law foresees establishment of a special structure to serve as a guarantee for the state for the tax collection, is there any special structure for protecting the taxpayer interests from the abusive and corruptive actions of the tax administration staff? The answer to this question is that Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania" did not provide anything in this regard.

¹¹ Council of Minister's Decision No. 400, of 22 April 2009 "On Setting the Tasks and Functions of the Tax Investigation Directorate".

¹² Article 17 of Law No. 8560, of 22 December 1999 "On Tax Procedures in the Republic of Albania".

The amendments enacted in December of 2009 established a new structure of the central tax administration -- that is the internal anti-corruption investigation.

Law No. 10209, of 23 December 2009 speaks of the addition of a new directorate in the tax administration structure, the Internal Investigation Directorate).

This Directorate together with the tax investigation units is specialized discovery, investigation and enforcement structures in the organigramme of the general tax administration. Different from the tax investigation structures, the main mission of the Internal Investigation Directorate (anti-corruption directorate) and of the tax investigation units are prevention, discovering and investigation of the tax administration actions that can compose a criminal offence. For realizing this mission they can utilize the information gathered from other sources of activity of the central tax administration staff, which can range up to criminal offences, coordinate the work with the prosecution office, as an intermediary chain, for a full cycle of investigation, and serve as a contact point between tax administration and other institutions dealing with the fight against corruption.

Taking into account the fact that almost in all the frequent surveys conducted from different organizations or media, the tax administration is frequently mentioned of involvement in corruptive actions, which are, of course, acts of certain individuals, the establishment of this new structure shall exactly serve for avoiding, discovering and denouncing corruptive actions by the tax administration staff. In this regard, the law provides possibilities for the protection of the taxpayers from these acts, avoiding their dissatisfaction, which shall by all means end up in tax evasion.

Although the tax procedure law has entered into force a while ago now, two other legal interventions have been made, adding and regulating various issues of the law. I am not capable of defining the reasons leading to such frequent amendments of the law. I really hope the cause is not the lacking capacity of the law-makers to proceed reforms with a suitable legal base, but instead that the reforms are dictated from economic development of the country, which have called for a suitable legal update. I think that it is of interest to speak about legal changes imposed by the legal amendments.

Law No. 10261, of 01 April 2010 provides for the establishment of two important structures at the Ministry of Finance and the General Tax Directorate. The first one is the establishment of the Taxpayer Advocate as a new structure in the General Tax Directorate. The second is the establishment of the Tax Council as an advisory body representing the taxpayer interests.

The Taxpayer Advocate and the Tax Council are established in the context of reforms funded by the Millennium Threshold project, as two very important institutions for increasing transparency in the fiscal system and for its modernization.

The Taxpayer Advocate Office, to be established at the General Tax Directorate, shall be a structure enabling an efficient information transmission and taking charge of handling all the problems the taxpayers have in their relations with the tax administration, unreasonable delays, unfair solution, etc. The concerns shall be received by the taxpayer advocate, latter transmitting them or resolving them in the appropriate manner within tax structures. Cooperation between the Taxpayer Advocate and tax administration shall avoid the arbitrary behavior towards businesses and taxpayers in general. Establishment of the Taxpayer Advocate shall protect the rights of taxpayers in face of the tax administration. At the end, the taxpayers should not be feeling unprotected in face of the tax administration, because they already have a door to knock to.

The Taxpayer Advocate is authorized to investigate all the taxpayer requests related with the tax administration problems, such as the unreasonable administrative delays, mistakes of tax officials not appropriately resolved after submission of complaints from the taxpayers, failure to respect tax procedures or violations of tax procedures from the tax offices. There are several administrative processes that shall be excluded from the sphere of Taxpayer Advocate supervision; such as is the case when the taxpayer has been subject of investigation by the Tax Investigation Directorate, or by the Internal Audit Directorate. He is not authorized to investigate upon or change something in the process of setting tax obligations, or in cases which are undergoing the application process. Also, the Taxpayer Advocate shall refuse those requests that are inadmissible or not unjustified and which aim at hindering the observance of application of the tax procedures.

Amongst the most important functions of the Taxpayer Advocate we can mention:

- identification, classification and fair treatment of each complaint received by the taxpayer.
- cooperation with the Taxpayer Service Directorate to promote the role of the Taxpayer Advocate in the protection of their rights.
- cooperation with the Internal Audit Directorate, with the Human Resource Directorate and with the other sectors of the General Tax Directorate to make sure that taxpayers are treated compliant to legal provisions and that their rights are protected and respected accordingly by the tax administration staff, in line with the code of ethics.

The Taxpayer Advocate should seriously handle and treat each individual case. The conclusions reached from certain cases in all the regional directorates should serve guaranteeing banning of other occurrences of mistakes. If, from the collected facts and evidence, the case asks for the initiation of an administrative or criminal investigation process, the Taxpayer Advocate shall refer these data to the Internal Investigation Directorate or to the Criminal Investigation Directorate.

The Tax Council is established as an advisory body at the Ministry of Finance. It shall serve as a technical advisory and as a communication forum for and between the Ministry of Finance, the General Tax Directorate and the taxpayers. The council shall be dominated by the participants from the business community. It shall deal with procedures and aspects of enforcement of fiscal laws. There are not a few cases when interpretation of the tax administration acts for the taxpayers have been lacking. This has, of course, brought negative consequences for the business community due to the misunderstanding or non-understanding of these acts. In these conditions, when the business shall be able to say its word in the process of discussing tax procedures and practices, it shall be better protected. The tax consultative council is planned to be established by the government upon the support of the Millennium Development Cooperation Threshold Programme for Albania. This initiative comes in the context of the commitments for guaranteeing the taxpayer rights and responsibilities, as stipulated in the law on tax procedures, which entered into force in June of 2008. The aim of the Tax Council is to discuss problems and to propose measures that would enable enforcement of the tax administration measures with a low financial cost for the taxpayers. This Council shall serve as a bilateral meeting point for the tax administration and the taxpayers. It shall offer a possibility for a constant information exchange and for discussing issues related with the enforcement of tax procedures in Albania. The Consultative Council is an advisory body having no decision-making power. Nonetheless, this Council can be transformed into a very useful body for the tax administration and the taxpayers.

Some of the Tax Council functions are:

- to examine procedures for the declaration of tax payment with the aim of improving and mitigating tax procedures;
- to examine difficulties of the taxpayers in enjoying the rights the legislation recognizes to them;
- to propose measures for guaranteeing respecting of taxpayer rights;
- to propose changes of procedures to enable the voluntary completion of tax obligations with the lowest administrative cost for the tax administration and with a low financial cost for the taxpayers.

In conclusion, it can be said that enforcement of the law on tax procedures is part of the deep reforms in the Albanian tax administration, including the functional re-organization of such administration, improvement of taxpayer services, introduction of electronic tax declaration, availability of the taxpayer electronic file soon as well as the cancelling of the requests for submission of the sales and purchase books for the VAT taxpayers. These efforts shall enable a full transformation of the tax administration in Albania, transforming itself into a transparent, effective and honest mechanism serving development and progress of the entire society.

Tax appeal

If we take into account the change the tax administration structures had to undergo because of the new law on tax procedures, it is natural and expected to have a different tax administrative appeal taxpayer procedure. The right to appeal is amongst the fundamental taxpayer rights. The law on tax procedures guarantees this right¹³, but the amendment has affected the appeal procedures.

Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania" replaces the Taxpayer Appeal Commission¹⁴ with the Appeals Directorate within the Tax General Directorate¹⁵. This replacement is widely commented by the public opinion and especially by the business community.

Where do these structures differ from one-another?

Let us see how these two instances are defined by the relevant laws, which, despite their different names, have in essence the same mission.

The 1999 law on tax procedures says that the Tax Appeal Commission is composed of seven members appointed by the Minister of Finance. Of these, two members were chosen by the Minister of Finance, two were chosen based on the proposal coming from the Union of the Chambers of Trade and Industry in close consultation with the business associations, one member based on the proposals of associations of economists, one member based on the proposal of the Minister of Justice and one member based on the proposal coming from the Minister of Economy. The members of the Tax Appeal Commission should be experts in economy or law. The Tax Appeal Commission was considered by the law as an independent body operating under the auspices of the Minister of Finance, but independent in its decision-making. The mandate of the Tax Appeal Commission members was defined for not less than two years, subject to the possibility of renewal. The Tax Appeal Commission had all the necessary authority to examine the tax appeal process, including the right to make investigations and to calculate the set tax obligations.

Upon dissolution of the Tax Appeal Commission, the tax procedure law of 2008 provides for the establishment of the Tax Appeal Directorate. This Directorate is established as an independent unit within the central tax administration. It is fully independent in handling complaints and in taking decisions on them. Its Director is appointed by the Minister of Finance.

Being part of the central tax administration, which enjoys the civil servant status, means that the staff of this Directorate, following the competition procedures, shall

¹³ Article 38 of Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania".

¹⁴ Article 134 of Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania".

¹⁵ Ibid, Article 18.

undergo a selection process by the direct title-holder, whereas the director of the Directorate is appointed by the Minister of Finance. But, how independent can the staff appointed through this procedure be? In addition, the work of such staff is periodically appraised by the same title-holder. Can this be an impartial Directorate in its stance when found, on one hand, in front of the taxpayers, and, on the other hand, face to face with their colleagues? This is difficult to predict. In this regard, I am of the opinion that the mixed composition of the Tax Appeal Commission provides for more guarantees for a realistically more independent judgment. Because of the fact that the Taxpayer Appeal Commission had members from the business community in its ranks, it was supposed to be more objective in its judgment.

I am impressed by the fact that the Taxpayer Advocate and the Tax Appeal Directorate are part of the central tax administration, while, in my opinion, these are two institutions that the taxpayers might address to seek remedies for their allegedly violated rights. Should the law take into consideration cooperation of such administration with the business representatives, so as to realistically create the possibility for an impartial decision-making? Anyhow, we will have to wait until at least until the Taxpayer Advocate starts its activity in order to better judge upon the taxpayer concerns. Despite of the nice wording of the law, practice shows frequent times that there are differences between the written law and the applied law.

The 2008 tax procedure law has imposed amendments even in the tax appeal instances. Up to the entry of this law in force, appeal against the tax administration acts was made in the tax appeal bodies in the hierarchy level from the lowest to the highest, as follows:

- the district tax branch (in charge of national taxation);
- the General Tax Directorate;
- the Tax Appeal Commission at the Ministry of Finance;
- the judiciary.

The hierarchy of bodies implies the fact that an appeal cannot be examined at a higher hierarchy level without its examination by a lower proceeding instance.

On the other hand, before submitting an appeal, the taxpayer is obligated to pay the tax obligation subject to appeal, or submit a warrant/guarantee for the amount of the tax obligation.

Changes in the tax procedures have affected the tax appeal instances. Pursuant to Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania", in any case when the taxpayer does not agree with an administrative act and believes that the tax administration has not correctly applied the law, he/she is entitled to the right of lodging an appeal with the Tax Appeal Procedure at the General Tax Directorate, requiring an independent re-examination of the issues related with this act.

As already remarked, there is a reduction of the tax appeal instances. Now, the taxpayer can lodge an appeal only with the Tax Appeal Directorate and can afterwards address himself/herself to the court. The purpose of this amendment is the reduction of the appeal procedures, leading also to the reduction of the time lost for the appeal. But, reduction of the appeal instances is not received well by the business community, according to which, the taxpayers now have fewer possibilities to win an appeal case.

In addition, as in the case of the 1999 law on tax procedures, taxpayer appeal shall be accepted by the Tax Appeal Directorate only if the complainant pays the full amount of the tax obligation set in the administrative act that is subject to appeal. The difference in the two laws in this regard is related with the parts of the binding tax obligation that should be paid. According to the old law, before submission of the appeal, the taxpayer should issue a document certifying payment of the tax obligation, not including the interests¹⁶. Whereas Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania" stipulates that¹⁷, in order for the taxpayer appeal to be considered, the taxpayer needs to submit a certificate of payment of the obligation subject to appeal, while the amount includes not only the tax, but even the interest rate. Stemming from the position of the taxpayers, it is clear that prepayment of interests from the taxpayers is not welcomed, as the taxpayers do not trust in the interest reimbursement in case they win the appeal. But, stemming from the tax administration positions we can say that this prepayment serves as a guarantee for cashing revenues in the state budget.

Conclusions and Recommendations

"Albania in the European Union" is not simply a dream for the Albanian people. Long years of endeavors are finally going towards a successful finalization of this aim. That said, we know that the way towards the European Union passes through deep reforms in all fields. These reforms shall of course touch upon the fiscal system and its all component parts, while it directly affects the interests of the individuals and the state budget.

Approximation of the Albanian tax legislation with the European *acquis* is in the right path. Approval of Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania" has reformed not only the tax administration, but has also urged important changes in the tax collection procedures. This reform has yielded results in practice as well, for as long as the revenues collected from taxation and taxes in the state budget have grown significantly. These positive results of tax reform are highlighted even by the European Union Progress Reports for Albania. The new spirit of the law is the spirit of cooperation with the business, establishing a proper rapport so

¹⁶ Instruction No. 2, of 30 January 2006 "On Tax Procedures" by the Minister of Finance.

¹⁷ Article 107 of Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania".

as to encourage voluntary payment of taxes. On the other hand, establishment of new structures, as the Taxpayer Advocate and of the Tax Council serves the same purpose. In this way, the taxpayer does not only feel better protected, but can also say his/her word through his/her representatives in the Council. Establishment of new tax investigation structures increases possibilities for avoiding tendencies of fiscal evasion. These structures, accompanied with the necessary legal power, are entitled to identifying and preventing use of illegal ways for avoiding payment of taxes. The most efficient functioning of tax structures shall lead to more revenues from taxes in the state budget.

In order to avoid corruptive actions of the tax administration staff, the law provides for an Internal Investigation Directorate (an anti-corruption structure). In this way, the regular and responsible taxpayer has no reason to be afraid of abusive and dishonest actions of any tax administration staff. Also, cutting of instances of tax appeal is expected of being another success of this reform. This way, the state shall manage to collect tax obligations more quickly.

There is no doubt that tax reforms are numerous. It seems like the newly introduced law has resolved many problems that could not be resolved by the 1999 law, but despite merits of Law No. 9920, of 19 May 2008 "On Tax Procedures in the Republic of Albania", we cannot negate the fact that there is still room for improvement. Expressing just my personal opinion, I would like to recommend some amendments, which can mainly improve the relations between the tax administration and the business community:

- Regarding Article 3 of the Law, speaking of the inclusion of all the international agreements ratified by the Assembly in the tax legislation of the country, I am of the opinion that the Law needs to be more specific, separating from the big number of international agreements ratified by the Albanian Parliament only those agreements related with tax obligations – that is tax agreements. Not all the international agreements ratified by the Assembly can be part of the tax legislation. Such a thing might cause confusion in the understanding of the tax legislation by the taxpayers. Meantime, by referring to only those international agreements containing tax provisions, it would be easier by the taxpayer to find the agreements that might have an impact on his/her tax obligations.
- According to my opinion, concentration of the competency for negotiating the agreements for the elimination of double taxation only to the Ministry of Finance, as stipulated in Article 11 of the Law, is not appropriate. Given that the competence for enforcing these agreements lies with the General Tax Directorate, I think that this Directorate has to be an active participant in negotiations. Thus, it can reflect in the negotiating process even the problems encountered in the implementation of these agreements.

- Speaking of laying down the tasks and functions of the General Tax Directorate, the Law assigns these tasks to internal rules of procedure, which are proposed by the General Tax Director and are approved by the Minister of Finance. In this regard, I think that the Law needs reconsideration. Stemming from the level of authority of the General Tax Directorate, an internal set of rules of procedures approved by this Directorate might not be a sufficient act to clearly set its functions and tasks. Let us not forget that the GTD is the highest tax authority operating all over the territory of the country, whereas the 1999 law on tax procedures dedicates a separate article on the tasks and responsibilities of the General Tax Directorate.
- Another issue that needs consideration, according to my opinion, is the dependent independence of the Taxpayer Advocate and of the Tax Appeal Directorate. These two are structures the taxpayer can address to seek his/her allegedly violated rights, while are part of the central tax administration. Probably the law should take into account the cooperation of this administration with business representatives, so as to realistically establish the possibility for an impartial decision-making.
- Cutting or reduction of the appeal instances and pre-payment of interests are two problems that are raised even by the business community in the course of the approval process of this law. I think that the exhaustion of the administrative appeal only in one instance, directly to the Tax Appeal Directorate, is not sufficient to guarantee non-violation of the taxpayer rights. Despite the fact that he/she is not excluded from the right of appeal in the court, the administrative appeal has an important role. Therefore, I am of the opinion that complaining should start from the title-holder of the executive body setting the obligation, while the Tax Appeal Directorate should serve as a second instance of appeal. On the other hand, pre-payment of interests, in the case of tax appeals, leads to no positive consequences to the taxpayer. This pre-payment reduces the taxpayer tax power, causing not only dissatisfaction, but even fewer possibilities of investments. Furthermore, interest prepayment in the tax appeal procedures yields no positive consequences for the taxpayer. This prepayment reduces the tax payment power, causing not only dissatisfaction among taxpayers, but also reducing their possibilities for investments. In addition, given that the tax appeal procedures need their time, even if the taxpayer shall be free of the tax burden, payment of the prepaid interests shall be delayed. This shall, of course, not have a positive impact on the relations and understanding of the tax administration with the business community.

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