Problems of the VAT law in Albania.

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Abstract
The tax legislation for the VAT in Albania has changed constantly. The VAT in Albania is regulated by the Law no. 7928 dated 27.04.1995 "On the VAT". This law was amended to date from about 30 other laws. The VAT law has changed from economic, financial and political developments in Albania. In the design of the fiscal policy of Albania, are taken into consideration the behavior of taxpayers and their ability to the tax evasion. Albanian state is trying to harmonize the fiscal legislation with those of the other countries of the European Union. This paper aims to show the main problems of the VAT legislation in Albania. At the end of this paper, I will give my conclusions of the issue.

Keywords: vat**,** vat law, taxpayer, instruction.

1. Introduction

The value added tax is a general tax on consumption of goods and services, proportional with their price, that is charged to the price without tax, at any stage of the production and the distribution process. The final consumer pays the VAT. The VAT is applied as a percentage tax on the price of goods and services and becomes required to be paid after the deduction of the VAT, that has directly affected the cost of various elements that make up the price of taxable supplies (goods and services) . The standard rate of the VAT in Albania is 20%. In connection with this standard rate, have had discussions about its differentiation to implement social policies of the state. In Albania, this tax rate has two levels; 0% for exports and international transport of goods and passengers, and 20% for the other taxpayers. In Albania, value added tax is regulated by the Law No. 7928 dated 27.04.1995 "On the VAT". This law has changed constantly. In my view as employees of taxes , the VAT law in Albania , has numerous problems and its implementation in practice has many difficulties .

2. Problems of the VAT law in Albania

The law No. 7928 dated 27.04.1995 "On the VAT" is composed of 60 legal articles , from article 1 "The purpose of the law" to the article 60 "Entrance in force of the law" . Some of problems of the VAT law that I can mention from my experience and from research that I have done on this field are:

a) For any fiscal law that was approved of the Parliament of Albania, Ministry of Finance is charged to develop an appropriate instruction . These instructions are more specific and explicit , that the relevant

laws , or some fiscal treatments can be found in the guidance and not in the law . Another problem of the drafting of these guidelines is the fact of the exclusion of the fiscal experts.

b) A failure of Instructions in the Ministry of Finance is ; each section of the law does not respond to any point in the relevant instruction . The same occurs to the VAT law . The only tax law, for which is followed this rule , it is the law No. 9920 Dt.19.05.2008 "On the tax procedures in the RA"

c) The VAT law, in some cases, leaves space for equivoque. In many cases, for a particular issue should refer to the instruction and not to the law. Even, in the tax assessments and in the tax controls are used legal references of the instruction. But, referring to the principle of superiority, the law has precedence over instruction of the Ministry and other legal interpretations. Some matters are explained in the instruction, that are evasive or, that are mentioned in the law, are as follows:
   - Fiscal treatment of the supply of gold
   - Fiscal treatment of operations under the active processing regime.
   - Fiscal treatment of the prepaid cards
   - Fiscal treatment of the fuel supply
   - Fiscal treatment of the tobacco supply
   - Fiscal treatment of the bad debt
   - Fiscal treatment of reimbursements treated in the VAT law and tax procedure law to the extent of legal conditions for refund, but the refund procedures and the taxpayer that has priority for reimbursement are treated to the instruction.
   - Reimbursement of exporters
   - Reimbursement of the financial agreements.
   - The paragraph, "Only original bill entitles the buyer to credit the VAT paid on purchases (discounted), is treated only in the instruction.
   - The paragraph in section 18.3 "Moment of the crediting" of the Instruction, isn't treated in the law. The VAT of purchases can be stated as VAT to be deducted from VAT of sales within 12 months. After this period, the taxpayer is not entitled to credit the VAT of purchases. This paragraph is very important for the control of the taxpayer purchases.
   - The calculation of the partial crediting is defined only in the instruction.
   - The taxable supplies, that isn't allowed the deduction of the VAT (19.4 paragraph of the instruction) specifically is addressed in the instruction, but isn't sufficiently treated in the law, such as prohibition of crediting the VAT for:
     - fuel Costs
     - costs for travel and per diem
     - costs for cars
     - fuel costs used for cars.
     - expenses for advertising and promotional items.
   - Special cases for the treatment of the right of the VAT deduction are not treated in the law.
   - The important concept; "total turnover" is treated in the instruction and not in the law. This concept is very important for determining the VAT threshold for registration of taxpayers.

d) Issues of the deregistration from the VAT. Referring to the section 4 of article 7 " Deregistration ", the tax authorities refuse to register and deregister any person who is neither obliged nor entitled to be registered, with effect from the date that the person is not entitled to be registered. Many taxpayers that are registered for the VAT , over the years , they could fall into recession, as a result, they can realize a turnover lower than the VAT threshold. As a result, the taxpayer may request the deregistration depending on the point 1 of article 7, that stipulates; the registered taxpayer is obliged to request the

deregistration no later than 15 days from the last day, when he has made taxable supplies, as part of its economic activity. But, in many cases these requirements for the deregistration are not executed because of fears that this action will be handled by the auditor in GDT as administrative infringement. As result, in many cases, the taxpayer service departments advise these entities to deregister, and then to re-register as taxpayers without the VAT. But this action is costly for the taxpayer.

e) The supply against reduced payment. In connection with this issue in the law and instruction is cited; supplies against reduced payment are cases where the supplier does not receive payment (gifts), or payment is significantly smaller than it should have been if the purpose of suppliers was for profit of the supply and similar supplies. Goods and services supplied in the above circumstances are taxable and their taxable value is the total charge, that should be payable based on the sale price in relation to that supply. This kind of legal reasoning has value in the prevention of the fiscal evasion. However, the law and the relevant instruction, with this paragraph does not take into consideration cases where a taxpayer may purchase a product with 20 ALL and can sell with 18 ALL, under purchase price, with 21 ALL over purchase price, but the total cost of the product under 25 ALL for various reasons such as; goods remained stock, this product has an alternate product that replaces better at the market, the company needs cash to carry out its immediate needs, etc.. So, not every case can be tax evasion. Since the law is categorical in this case, then the controller is entitled to reassess the taxable income of the taxpayer, that sells under the price of purchases or under the total cost of the product. As result, the taxpayer is charged with tax liabilities, putting in difficulties the financial situation. The tax reassessment, in these conditions is made in reference to article 27 "Taxable Value" that states: 1. The taxable value of the taxable supply is the total amount paid for that supply, unless, that in the law stipulates otherwise. 2. The taxable value of a supply of goods in article 18, paragraph 2 or 3 is the total payment, that shall be payable in respect of that supply, if the supplier's goal is to profit from the supply and similar supplies. The tax reassessment in these conditions can also occur in reference to article 71 "The right to use the alternative ways of the tax assessment" and article 72 "Basics of ways of the alternative assessment" of the law no. 9920 Dt. 19.05.2008 "On the tax procedures".

f) The construction sector and the fiscal minimal cost are not sufficiently treated in the law, but are mentioned in the instruction. So far, we can say that there isn't a correct fiscal treatment for this matter. The tax experts, accountants, the accounting experts and tax administration employees often refer to the "Accounting Standard - Construction Contracts", to the agreement of the General Directorate of Taxation with the Association of Builders, although it is repealed, and DCMs that are published each year for the cost minimum tax and the cost of sales, for the calculation of the volume of works, payment of the VAT, the profit tax, the social and health insurance etc.. The necessity of calculating the minimum cost in each fiscal year, comes as a result of abuses that have been made in this sector. In the tax report audits held for construction firms, reported; the taxpayer has paid taxes to the fiscal minimum threshold, the taxpayer declares under this minimum threshold and then the tax inspector makes re-evaluations revenues; while the taxpayer declares over this limit, he commended. However, a taxpayer may result with the construction cost higher than the cost approved by law for different reasons; advanced technology, highly qualified workers, high quality materials and as a result more expensive etc.. Thus, the reference to the minimum cost is not accurate because for various reasons such as, inability of the control inspectors in the field of the accounting and the fiscal policy, the lack of the information in the field of the construction engineering, abuse of inspectors etc.. It brings the denatured volumes of works for the construction companies, as well, result to the evasion of taxes. Therefore in such cases, for the control of taxpayers in the construction sector, must be sought the assistance of professionals in the field of the construction engineering.

g) Interpretations of the Ministry of Finance, often conflict with those of the General Directorate of Taxation, but referred to the article 14 -"The General Directorate of Taxation, the regional departments and other units" stated that; The General Directorate of Taxation is the only central tax authority in the Republic of Albania, which enforces and administers the national taxes, the public charges and the collection of contributions as provided in section 4 of this law. Why this happens? This fact occurs due to the interest of parties or due to the lack of the professionalism of one party. Example: Under the guidance of the Ministry of Finance, the subsidy as a price compensation is not a taxable supply because does not meet "conditions of the supply", while for the GDT, the subsidy is a taxable supply. A conflict arises because in any section of the law and instruction of the VAT does not mention that the subsidy is a taxable supply, but the interpretation of some legal references implies such a thing. Let us take an example that how the fiscal policy justifies this case. The taxpayer "X" for the period "01-12/2012", has realized the taxable income with the value ALL 100,596,205, with a production cost which is significantly higher than income, with the value ALL 180,410,328. Costs for electricity are ALL 74,268,872 and for these purchases is credited the VAT at 20%. Meanwhile, as the taxpayer does not cover the direct costs of the production is subsidized by the state with the value ALL 79,348,890 to cover the costs of the electricity and other costs of the production, which is credited the VAT. Following this reasoning in the Instruction No. 17 dt. 13.05.2008 "On VAT", the paragraph 1.1.2 - (a), stated that "circulation" includes other supplies that can be performed during the activity of the taxable person as subsidies, allowances etc.., In addition of the preceding paragraph, the subsidy is not included in supplies excluded from VAT, laid down in articles 20 to 25 and in articles 25.1, 25.2, 25.3, 25.5, 25.6, 25.7, 25.8, 25.9, and 26.1 of the Law No. 7928 Dt. 27.04.1995 "On the VAT" . Based to the paragraph 2 of article 27 and paragraph 3 and 4 of Article 18 of the Law "On the VAT" no. 7928. dated 27.04.1995, subsidies given for reimbursement of the sale price of the water for consumers are taxable with the VAT. The total subsidy for 2012 obtained as compensation price is the value ALL 79.348.890, as a result VAT will be in the value ALL 13,224,815 (ALL 79,348,890 / 6).

h) The law “On the VAT” does not take into account the important activities for the community on the determination of the rate of the VAT, such as; the case of the consumption products. Activities that are privileged under this law are; pharmacies, healthcare institutions, educational institutions and exporters, that are excluded from VAT. Besides some specific cases, in all other cases the rate of the VAT is 20%.

i) Referring to the article 41 "Tax Assessment" of the VAT law and specifically to the article 71 and 72 of the law "On the tax procedures", the tax administration has the right of the tax re-assessment in these cases:
   a) taxpayer does not submit the tax declaration, in accordance with the deadline and the manner required in the relevant tax legislation;
   b) tax statement contains inaccurate data or falsified;
   c) taxpayer does not maintain accurate records of transactions;
   d) taxpayer does not cooperate with the authorized tax control;
   e) taxpayer does not make available the information required and other documents necessary for calculating their tax liability;
   f) taxpayer enters into transactions with related persons, not based on the principle of the market value,
   g) taxpayer enters into sale-purchase transactions in cash, in excess of 150,000 leks.
   h) taxpayer does not use regularly the fiscal device.

The numerous cases, in which the tax re-evaluations are made, are situations under b, c, d, e. In terms of points "d" and "e" the instruction cites, (while the law does not mention) ; when the taxpayer does not allow access to the control, the tax assessment is done directly from the office, using rules defined in the article 72 of the law, without needing the presence of the tax inspector in the taxpayer's environment. The notice of the tax assessment prepared by the tax office sent to the taxpayer by signing the Director of the Regional Directorate of Taxes. The tax assessment of the tax administration, made from the office, will cancle, once the taxpayer customize his situation, and create conditions allowing for the exercise of the tax control. The cancellation always is accompanied with the application of the appropriate penalties (including the penalty for not allowing the control) and their obligation to pay. But, referring to the article 70 "The right to issue a notice of the tax assessment" of the law "On tax procedures in the RA", the notice of the assessment for the tax obligations issued by the inspector of taxes and signed by the Regional Director becomes final and considered as normative act. But the right to cancel this normative act is of the Directorate of Tax Appeals or the Administrative Court referred to articles 108 to 109 of this law. As a result, in these circumstances, the taxpayer, for which is carried out the alternative assessment, even has enabled the necessary infrastructure for the control, in order to be carried out a realistic and reasonable control, must perform the grievance procedures in order to resume the control procedures. The taxpayer must appeal and win the right to be re-controlled, according to article 106 and 107 of this law and should follow steps below:

- The taxpayer submits a complaint to the Directorate of Tax Appeals within 30 calendar days from the date, that the assessment or the decision of the tax administration is received or estimated to be received by the taxpayer.
- A taxpayer who wants to appeal under paragraph 1 of article 106 of this law, together with the appeal must pay the full amount of the tax liability or establish a bank guarantee for the full amount of the tax liability specified in the notice of the assessment of the tax administration.
- The amount payable or the bank guarantee under paragraph 1 of this article shall preclude fines.

So, the complaint will be considered only if the taxpayer has paid the tax liability, which is subject to appeal, or filed document that confirms the bank guarantee. If the tax reassessment is a considerable amount and the taxpayer can not pay, then, the taxpayer does not benefit of this legal reference, thus, the re-conducting of the tax control. So, this is a case where the law has difficulties in its implementation in practice. The solution in this case would be, that the law provided, the Regional Director that issues the notice of the assessment for taxes, must have the right to repeal in the special cases. On the contrary, in such cases the decision of the Department of the Tax Appeals to repeal the assessment notice dealing with the request of the Director of the GDT.

3. Conclusions and Recommendations.

My conclusions for the problems of the VAT law in Albania are as follows:

- ✓ Since, the VAT is a tax that contributes sufficiently to the Albanian budget, the VAT law, should treat accurately and indisputably all issues related to the operation of this tax.
- ✓ Referring to the principle of the superiority, the law has precedence over instructions and other legal interpretations. Consequently, this law should not contrast with guidelines and legal interpretations. This law should be updated in accordance with the law "On Tax Procedures in the RA."
- ✓ Each section of the law should be answered to the each point of the instruction of the Finance Ministry.
- ✓ The VAT law should not let space for equivocation.

- ✓ The fiscal treatment of the construction sector should be included in the VAT law and should be treated in coherence with the national and the international standards of the accounting.
- ✓ The VAT law should take into account activities with, importance for the community regarding the determination of the rate of the VAT, as is the case for example the food industry.
- ✓ Since, Albania seeks to integrate in the EU, the VAT law should be changed in accordance with Directive 2006/112 / EC of the Council of Europe, dated 28 November 2006 "On the common system of value added tax".
- ✓ The new draft law on the VAT is being drafted by the new albanian government in accordance with Directive 2006/112 / EC of the Council of Europe.

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