

DRAFT- MATRIX OF RECOMMENDATIONS FOR THE IMPROVEMENT OF DISPUTE RESOLUTION MECHANISMS BETWEEN THE BUSINESS AND PUBLIC ADMINISTRATION			INVESTMENT COUNCIL SECRETARIA T FEBRUARY 2016
PILLAR	RECOMMENDATION	RESPONSIBLE INSTITUTIONS	TIMELINE
I. EFFICIENT ACCESS TO ADMINISTRATIVE APPEAL	1. Facilitation of access for businesses in exercising the right to administrative appeal in fiscal cases. Although that some improvements in this perspective have been done (i.e Banking Guarantee as an alternative to prepayment has been stipulated under the Law 9920), further improvements are requested.	Ministry of Fiance, Minister of State for Relations with Assembly, GDT, GDC	☐ Short-term
	1.1 Guarantee of the real access in appealing procedures, aiming the relief of the pre-conditions stipulated in the laws for administrative appealing, may be achieved through one of the following alternatives:		☐ Medium Term
	a) Business pay in advance, only a small portion (10%-15%) of the re-estimated tax or customs liability amount (not including fines) and not 100 % as they currently do; or		
	b) Instead of paying in advance part of the liability, businesses pay only a non-refundable administrative fee for filing an administrative appeal at the appellate structure (<i>according to the model currently applied for complains by the business at PPC</i>).		
	1.2 The legislation on tax and customs should give the opportunity to appeal also to the <i>de facto</i> bankrupt entities, when the latter are able to prove insolvency (for example through a report of an independent expert in this area).		

II. EFFICIENCY OF APPEAL STRUCTURES WITHIN PUBLIC ADMINISTRATION	2. Decisions of TAD, as the upper administrative unit that decides on Appeal matters, should be automatically binding for the Regional Tax Directorates. The right of the Regional Tax Directorates to appeal the decisions of TAD further in court, according to the provisions of Article 109/3 of Law No.9920, should be abrogated.	Ministry of Finance, Minister of State for Relations with Assembly, GDT	☐ Short-term ☐ Medium-term
	3. To effectively increase the independence of TAD and separation of its functions from the structure of General Tax Directorate (GTD). Establishment of a collegial body of appeal, in the form of a “<i>quasi court</i>” in the framework also of the plans for the unification of tax and customs administration. This appealing structure should be established via a specific law and have competence to review the administrative appeals (above a certain amount) in respect to tax and customs administration acts.	Ministry of Finance	☐ Short-term ☐ Medium-term
	4. Suggested to merge and centralize Inspectorates’ appeals at the Central Inspectorate, in order to enhance the professionalism, independence and trust regarding the appeal in the State Inspectorates. On this regard is recommended:	State Inspectorates, Minister for Innovation and Public Administration	☐ Short-term ☐ Medium-term
	a) Ammendment of the Law No 10433, date 16.06.2011 “On Inspections in the Republic of Albania” to define the competencies, structures and procedures of the Central Inspectorate related to appealing of decisions from the subjects of inspections. • Abrogation of paragraph 2 and paragraph 3 of article 51, in order for the appealing procedure to be centralized and be conducted by a specialized entity of the inspection system such as Central Inspectorate. • To ammend the paragraph 4 of article 16 to allow the decision-making of Central Inspectorate in cases of complaints of subjects versus the final decision of an inspection. • This competency to be added also to the functions of the Central Inspectorate in paragraph 2 of the article 16 of inspection law by		

	unifying the “Supervisory Body” with the Decisions of Council of Minister for establishment of the supervisory body by abrogating the related paragraphs in respective DCMs of state inspectorates.		
	5. To draft/ include in the internal administrative acts (NANR, State Inspectorates, Tax Administration, Custom Administration) mechanisms of prior constructive consultation with businesses for discussing the problems and potential solutions (referring to the Law 146/2014)	NANR, Central Inspectorate, GDT, GDC	☐ Short-term ☐ Medium - term
	6. Informatisation (e-filing, online statements, online exchange of information, etc) of systems between institutions of the administration such as for instance among the tax administration, customs administration, IPRO, transport directorates, etc.	Minister of Innovation and Public Administration, GDT, GDC	☐ Short –term ☐ Medium - term
	7. Interpretation through a special Instruction of Council of Ministers to public administration bodies for procedures to be followed regarding recommendations reported by Supreme State Audit. Public administration bodies should review with working groups the tasks and recommendations made by the Supreme State Audit, in order to avoid their <i>a priori</i> implementation, especially in cases when their arbitrary implementation violates the legal security and the business legal rights. This would also reduce the costs of State Budget, in cases when the business rights are put in place by courts, and the State would be obliged to compensate the business for the caused damages.	Council of Ministers, Ministry of Finance	☐ Short –Term ☐ Medium-Term
	8. Unification of the timelines for exercising the right of the administrative appeal is deemed necessary. It is recommended a timeline of 30 days from day of the acknowledgment about the administrative act. With the entry into force of the New Code of Administrative Procedures in June		☐ Short-term ☐ Long-term

	2016, is required to prepare, review, publish in due time the special administrative procedures to be in conformity with the New Code and awareness of the institutions on such.	Council of Ministers, Ministry of Justice. Ministry of Finance	
	9. Staff sustainability and continuous professional advancement of appeal structures in institutions. Joint training programs between businesses and administration would prevent disputes among parties. It is also suggested to organize joint training programs for the Administrative Courts, Tax and Customs Administrations through the school of Magistrates with the assistance of business associations, such as for example, the Albanian Association of Banks. This would help also in the unification of practices for both, the administration and the Judiciary.	Ministry of Finance, Ministry of Justice, Magistrates School, GDT, GDC	☐ Short-term ☐ Medium -term
	10. The unification of practices and preparation of commentaries for similar cases, especially in Tax, Customs and Inspectorates, possibly in the sectoral viewpoint, such as banking, agro-industry, natural resources, etc. From the viewpoint of businesses, experts and groups of interest contacted by Secretariat, <i>the unification of consolidated practices</i> it is considered as one of the most necessary elements which would reduce to a considerable extent the number of appeals filed against the decisions of the tax administration and improvement of business perception indicator related to it. An important role in the unification may be played also by the State Advocacy Office through its active role in interpreting legal cases of generalizing nature for the entire public administration. This requires also legal amendments to Law No. 10018, dated 13.11.2008 “On the State Advocacy Office”.	GDT, GDC, Central Inspectorates, Ministry of Finance, State Advocate	☐ Short-term ☐ Medium - term
	11. Establishment of one stop shop for informing and raising awareness of the business to be compliant with the legislation (efficiency of tructures that serve tot he business in Tax/Customs/NBC)	GDT, GDC, NBC Donors	☐ Short – term ☐ Medium - term

III. TRANSPARENCY OF APPEAL STRUCTURES	12. The decisions of TAD/Inspectorates/GCD must be made public systematically. This obligation as well as the enforcement of the deadlines foreseen by the law when the administration has to reply top business complaints need to be part of internal audit programme. Control of implementation of appeal principles guarantees an accountable and professional administration.	GDT, GDC, TAD, Central Inspectorate	☐ Short-term ☐ Medium-term
	13. Publication of annual reports of GTD, GCD and special Inspectorates as well as the inclusion in this annual reports the outcome of administrative appeals and their progress in Court.	GDT, GDC, TAD, Central Inspectorate	☐ Short-term ☐ Medium-term

Short term – for a period from 1 to 6 months

Medium term – for a period from 6 to 12 months

Abbreviations:

- NANR- National Agency of Natural Resources
- NBC- National Business Center
- GDT – General Directorate of Taxes
- GDC – General Directorate of Customs
- TAD- Tax Appeal Directorate