

WORKING PAPER

ON

**Proposals for improvement of the tax inspection process: an
analysis in the framework of Improving Business Climate in
Albania**

Tirana, September 2015

This Working Paper has been produced to stimulate debate on the necessary improvements required by the business with regard to tax audit procedures in Albania. The recommendations have to be further considered and approved by the Investment Council. The paper has been prepared by the experts of the Secretariat of Investment Council, Ms. Ermelinda Xhaja, Economic Expert and Mr. Elvis Zerva, Legal Expert under the guidance of the Head of the Secretariat, Ms. Diana Leka. Views presented are those of the authors and not necessarily of the Investment Council or EBRD.

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LIST OF ABBREVIATIONS

AAB – Albanian Association of Banks

AmCham – American Chamber of Commerce

ATA – Albanian Tourism Association

BEEPS – Business Environment and Enterprise Performance Survey

EBRD – European Bank for Reconstruction and Development

FIAA – Foreign Investors Association of Albania

GTD – General Tax Directorate

IC - Investment Council

IDRA – Institute for Development Research and Alternatives

IFC – International Finance Corporation

IMF – International Monetary Fund

MoF – Ministry of Finance

OECD – Organization for Economic Cooperation and Development

RTD – Regional Tax Directorate

TA – Taxpayers' Advocate

TAD - Tax Appeal Directorate

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I. EXECUTIVE SUMMARY

The purpose of this Working Paper is to review and analyze the concerns on the tax audit process in Albania and provide some practical recommendations for enhancing the effectiveness of such process. In the analysis have been considered both views of taxpayers and tax administration, aiming to integrate them in solid suggestions for the tax system.

Simultaneously, this analysis is initiated in the framework of the Government's reform on improving tax system in Albania such as the application of the online tax declaration since January 2015. It also comes at the moment when the Government has launched a large campaign against informality and amid debates raised among politicians, media and businesses. In this context, it aims to constructively assist the tax reform process as one of the main pillars in improving business climate in Albania.

Various documents from official sources and stakeholders have been consulted, including but not limited to, FIAA Survey on "Business Environment in Albania" (2015), IFC Survey on "Cost of Tax Compliance in Albania" (2013), III Index of Business Climate in Tourism Survey, BEEPS V Survey, OECD 2006 and IMF 2015 Report, etc. For the purpose of this assessment, interviews have been also organized with relevant stakeholders. Furthermore, a specific Survey on Tax Inspection was launched online by the Secretariat in cooperation with several business associations and chambers of commerce and industry, aiming to receive the taxpayers' opinion. The survey was completed anonymously, entirely online by 110 companies, where 78% of the respondents were medium and large businesses, while about 22% of foreign ownership.

The findings have shown that the companies acknowledge the significant measures recently undertaken by the Government, such as the new VAT Law and Customs Code, new IT system, ongoing efforts for an automatic VAT reimbursement, improvement of VAT reimbursement rules and procedures, inclusion of the new audit/risk procedures according to the profile of tax liabilities with special focus on VAT (ongoing). However, there are still serious concerns related to the sustainability and clarity of the legal framework, implementation of tax procedures, professionalism of tax administration, transparency and timely information provided to taxpayers on legislation changes that may leave room to abuse and corruption practices by both parties.

The main findings and respective recommendations from the analyses have been summarized in three main directions: i) Tax Legal Framework; ii) Tax Administration; iii) Transparency and Awareness Raising.

The key recommendations per each direction are summarized as follows:

Amendments of the tax legal framework:

- Government should ensure in *short term* a fully transparent system of tax inspections, by publishing the main risk indicators/criteria used by the Electronic

System of Risk to identify the businesses with risk and therefore subject to Inspections.

- The decisions of TAD as the upper administrative unit to decide on Appeal cases, should be automatically *binding to RTDs*. The RTDs' right to appeal against TAD decision needs to be removed. The amendments which can effectively increase TAD independence and separation of its function from the structure of GTD should be considered as priority.
- Alternatively to the “*Bank Guarantee*” as provided by the Law, the taxpayer should be legitimated to initiate the Appeal procedure against TAD, by paying only 50% of the tax due (excluding interests). Interest will of course continue to accrue on the remaining unpaid 50% of the tax due
- *Enlarge the role of TA* in the Tax Audit especially in *re-audit procedures*. Re-organizing of the TA to increase its independency and active partnership with the taxpayers.
- The adoption at the highest level of the 90% electronic risk based system in all kinds of audits, not only for the VAT reimbursement, but also for other taxes. To be considered the application within a *medium time-term* due to its complexity.

Tax Administration

- *Specialized tax inspectors* to be appointed in the *short term* based on the taxpayers' profile (small, medium and large taxpayers) and sectorial specifics. It is necessary the improvement of capacities and resources of inspectors in the *medium term*, as well as provision of incentive packages in particular for those working in TAD and VIP Taxpayers' Directorate.
- GTD and TAD to *increase the capacities on legal analyses* and unify their own practices, as well as to reflect the final decisions of the Courts for similar cases. GTD to prepare and publish in the official website *the Annual Commentary of Cases*.

Transparency and Awareness

- *Publication as soon as possible of GTD and TAD annual reports and decisions* as a means of increasing the standards of transparency to the public;
- Website to be *100% available/accessible*, as well as in *English language*;
- *Stabilization of the fiscal package* and tax procedures in the *medium term* through public consultations in order to be properly and timely projected by the business in their investments plans.
- The development and publication in medium term by GTD of an *annual communication programme* including *simple manuals and informing sessions* with business associations diversified by sector on tax legislation and procedures.

II. INTRODUCTION

A proper management of tax system is key to success for the public finances and macro-economic stability of the country. Additionally, it creates solid ground for the attraction of investments, promotion of business and therefore economic growth. Effective procedures in tax administration, which ensure transparency and impartiality in relationships between the state and business entities, lay the basis of a successful operation of fiscal system. The crucial aspects in this regard are the *organization, professionalism and implementation of tax audit/inspection activities at minimum cost to the budget and taxpayers*.

Investment Council in its first meeting held on July 1st, 2015, decided to prepare an assessment on tax inspection in Albania, as one of the most pressing concerns for doing business identified in several studies and surveys and through direct meetings with business community.

According to the 2014 EU Progress Report, Albania has made some progress, notably in the area of tax legislation, but the capacity of the tax administration to fight corruption, tax evasion and informal economy remains to be strengthened.

Since 1st January 2015, the e-tax service became effective and the implementation of a new IT system initiated within the tax administration. These steps, together with the recent amendments on VAT reimbursement procedures, are part of the reform on Tax System and e-Services in Albania, which are expected to provide positive impact on the efficiency of tax audit and on the relations with taxpayers.

This Paper reviews the current legal framework and tax audit/inspection process, identifies gaps and possible implications on the business climate in Albania and provides relevant concrete recommendations to be adopted by the Government for improving the effectiveness of the tax system in the short and medium term. The Recommendations will be subject of discussions and further considerations by the Investment Council in its meeting scheduled on 05th October 2015. In case of approval, the relevant recommendations will be officially proposed to the Government of Albania for proceeding with the necessary legal and regulatory reviews.

III. METHODOLOGY

For drafting the assessment and proposals for improvement on tax audit, the Secretariat followed an inclusive and analytical approach by consulting various stakeholders from public and private sector, as well as international organizations active in the area. The paper has considered and integrated the perspectives of both taxpayers and tax administration. The work started with the desk research on the legal framework, relevant reports and surveys produced by International Organizations and Business Associations in Albania. It proceeded with semi structured interviews with tax officials, representatives of

business associations and private companies. It was followed with an online survey for business entities on specific issues related to tax inspections.

3.1 Desk review

For the purposes of this Paper, the relevant tax legislation including laws, bylaws, annual reports and other working materials of the Government, GTD and TA, were reviewed and assessed. Main source of information has been the GTD website. The data provided by the GTD and TAD on the number of audits/inspections have been the source of the modest comparative analyses in the paper. In addition, national and international studies and surveys on tax system and specifically on tax audit published in the last three years from IFC, FIAA and ATA served as baseline for the findings and the questionnaire. A list of reference documents is included in the Annex 1 of the Paper.

3.2 Interviews & meetings

Semi-structured interviews and meetings have been organized with tax administration officials from the highest level of policy making to the operational level involved in tax auditing as well as with representatives of business associations and business entities. About ten meetings have been conducted with public officials and fiscal experts during August- September 2015 in order to have the views of those that draft the policies and legislation on tax audit and of those that monitor its implementation. At the same time, meetings have been also conducted with heads of four well known business associations in Albania such as FIAA, AAB, Tirana Chamber of Commerce and Industry and ATA, to get another perspective from those that have to comply with the tax legislation. Furthermore, one focus group discussion was organized with ten fiscal experts to assess the findings and recommendations of the Paper. List of stakeholders met by the Secretariat may be found in Annex 2. The list of experts who participated in the Focus Group discussion held on 17th September 2015, may be found in Annex 3.

3.3 Survey on tax inspection

Following the above stages, a tailored questionnaire to the tax audit process and compliance was deemed necessary to support preliminary findings and recommendations. The purpose of the questionnaire was to gather as many as possible feedbacks from the taxpayers on their experience with tax audit in Albania as well as to express their opinion on the difficulties to comply with the current tax legislation. More specifically, the following topics were addressed in the questionnaire attached to this Working Paper as Annex 4:

- 1. The clarity of the current applicable legislation related to Tax Inspection procedures;*
- 2. The way the current legislation in force is interpreted by the structures of the Tax Administration (i.e. RTD, TAD, etc.)*

3. *Business information on the procedures applied by Tax Administration during tax inspections.*
4. *The performance & professionalism of the inspectors during the Tax Inspections;*
5. *Relations of the taxpayer with the tax administration.*

The questionnaire was launched online on the Investment Council website on August 27th and was closed on September 14th, 2015, available in both languages, English and Albanian. Businesses Associations throughout Albania were approached to facilitate the distribution of the Survey to their members, thus aiming businesses of all sizes, types and geographical locations. The survey was completed by 110 businesses, where 78% of the respondents were medium and large companies, while about 22% were of foreign ownership. The most major sectors which participated in the survey were Services (32%), Hotels and Touristic Agencies (24%), Industry (22%) and Trade (15%).

IV. ANALYSES AND FINDINGS ON TAX AUDIT

Albanian economy is heavily dependent on small and micro businesses, about 90 % of enterprises have 1-4 employees. As per official data, the large enterprises with 50 and more employees represent in number 1.3 % of total active enterprises, but their contribution on employment is very sensitive, 50 % (INSTAT, 2014)¹. Moreover, the tax legislation provides for taxation purposes another definition of enterprises categorisation, which is based on annual turnover. A small business, according to the tax legislation, amendment of Law No. 9632 (2006),² is defined with an economic activity and an annual turnover equal to or less than 8 million ALL (approximately 57,500 EUR). In addition, the GTD has internally grouped the largest taxpayers, known as VIP, those that have an annual turnover above 250 million ALL (approx. 1.8 million EUR)³. The number of VIP taxpayers varies from 808 at the end of 2014 to 770 in mid-2015, counting for less than 1% of active enterprises in Albania.

- *VIP taxpayers are the most audited businesses by the tax administration. The businesses consider excessive the number, frequency of the tax audits and the direct contact with inspectors.*

Although the number of VIP taxpayers is really low, their contribution to the state budget is significant with around 40% of tax revenues. Based on the data collected during the interviews performed with GTD and TAD representatives, it was evidenced that all large taxpayers have undergone a full tax audit or fiscal visit procedure averagely twice in the last three years. According to the Article 80.3 of the Instruction No.24 of the MoF “On Tax Procedures” tax audits are categorized as follows:

¹ INSTAT- Business Register 2014

² Article 10 and 11 of the Law No. 9632, dated 30.10.2006 as amended

³ GDT Regulation dated 30.03.2015 “On Management of the Taxpayers of the Large Taxpayers Regional Directorate”

a) Full in site tax audit.

These are full audits to control all aspects of the business of the taxpayers for all the periods from the last full tax audit and for all kinds of taxes. These audits are conducted based on risk analysis.

b) Fiscal visits.

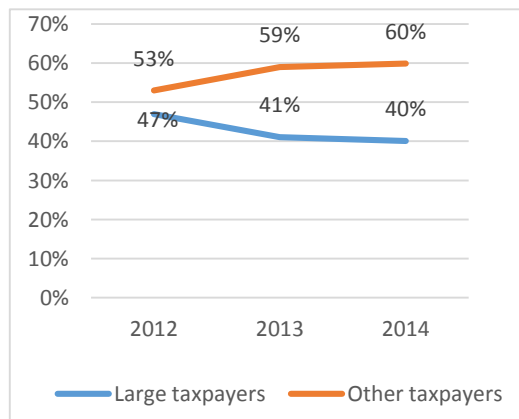
These are short audits performed during a short time in order to verify the accuracy of the statements and payments, only for a given tax period and only for a specific tax.

c) In-site inspections

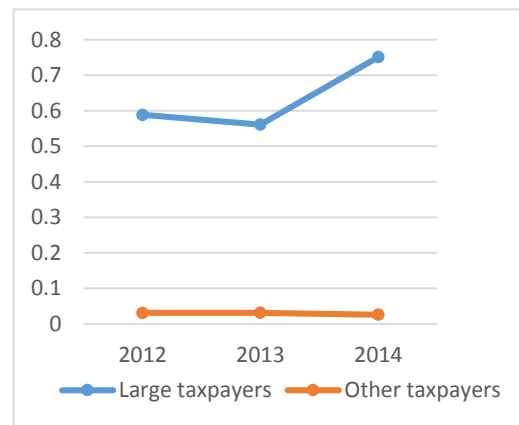
These short audits aims to detect the violations related to the registration of taxable persons (identification of unregistered persons), the use of fiscal equipment, the use of fiscal and excise on goods, issuing tax invoices, etc. These audits are carried out without prior notification to taxable persons.

Additionally, the Survey findings have demonstrated that 93% of big companies have had a full audit during 2013 – 2015 that in average lasted between 1- 4 weeks. Businesses are concerned related to the frequency of the audits, and perceive them as a means for tax administration to meet its budget plans. 25% of big companies responding to the Survey, claim to have had all the types⁴ of tax control for 2013 – 2015, corresponding to three to four audits. Additionally, comments like “*the most correct taxpayers are the most audited and punished*” have arrived through the online IC Survey.

Graph 1: Contribution of taxpayers' categories in tax revenues



Graph 2: Audits frequency for categories of taxpayers



Source: General Tax Directorate

- Based on the above findings, showing a high indication of tax audits performed by tax administration during the period 2013-2015, it becomes questionable the efficiency of the selection process performed until now, the proper use of limited resources by the tax administration and the real purposes of tax audits.

⁴ As defined in the Instruction of MoF No.24, dated 02.09.2008 “On Tax Procedures in the Republic of Albania” (as amended)

The purpose of a tax audit and the implementing procedure is described in the Chapter X of the Law No 9920, “On Tax Procedures in the Republic of Albania” as amended. Articles 80-87 define the main rules to be applied and followed by the tax administration structures. Additionally, the latter’s rights and competences are defined by the secondary legislation such as Instruction of MoF No. 24, dated 02.09.2008 “On Tax Procedures” (as amended), Regulation No. 1 dated 28.04.2009 “On Procedures for Audit Selection” and the internal Manual on Tax Audit. According to the Regulation No. 1 dated 28.04.2009, the selection for a tax audit is done based on the risk system.

The paragraph 1.7 of the Regulation states that subject to automatic selection for control are all VAT taxpayers and the taxpayers that fall under the Article 16 of the Law No. 8438 dated 28.12.199 “On Income Tax” (as amended). In addition, as per Regulation, 60% of the audits are selected by the system and 40% as proposed by the RTD based on their own experience and information which derives from the companies’ balance sheets, payrolls, or information from third parties such as banks, notaries, mortgage offices, customs etc. Criteria and formula for the automatic selection through the *Electronic Risk System* are proposed and approved by the high officials of the GTD and kept strictly confidential.

However, so far, there is a general perception by the businesses that tax inspections are not performed based on the risk factors, but aim only to issue penalties and collect additional revenues to meet the planned figures as well as to pressure businesses for paying bribes to the tax officials (IFC, 2013 & IC Survey, 2015).⁵ By making use of the limited data on tax audit/inspections provided by GTD for 2008-2014 is attempted to figure out any potential impact on tax revenues. However, it has not been possible to identify any significant correlation among the number of tax audits/inspections and the increase of tax revenues (correlation coefficient 0.3 for large taxpayers and -0.06 for other taxpayers).

Although significant reforms have been undertaken recently, such as new VAT and Customs Code, new IT system, inclusion of the audit/risk procedures (ongoing), the findings of the survey and meetings confirmed that high concerns still remain from businesses related to:

- *sustainability and clarity of the legal framework,*
- *implementation of tax audit procedures,*
- *professionalism of tax administration,*
- *transparency and relations with taxpayers that may lead to corruption practices.*

4.1 Tax legal framework

- *Complex procedures to be followed by the business in order to be compliant with tax legislation.*

⁵ IFC-IDRA, Tax compliance cost in Albania, 2013 (only 35% of the businesses have the opinion that the inspection happens for legal reasons) and findings of the Secretariat survey on Tax Inspection (2015) in Albania for the purpose of this paper.

Explicit comments have been submitted through the IC Survey on “Tax Inspection” (2015) regarding the clarity of tax legislation and complexity of procedures which create difficulties to taxpayers, in particular to the small ones, to comply with the tax system. Tax legislation in general is perceived especially by the medium and small businesses as too difficult to deal with. Applicable procedures for specific cases are sometimes difficult to be identified. Some 56% of big companies responding to the IC Survey think that the adequate implementation of the laws has to do with the clarity and interpretation of legislation. When it is disaggregated by sectors, the Trade and Industry responders are the most sensitive to the issue, respectively with 61% and 55%. The same concern is evidenced also in the IFC and FIAA surveys conducted in 2013 and 2015, respectively. However, the application of the e-tax service has been appraised by the majority of the respondents from both small and big companies to have eased somehow the procedures related to self-declarations and on paying taxes.

The latter ones are also indicators which have contributed to the increase of Doing Business⁶ ranking for Albania in 2015. However, as “Doing Business” Report (2015) shows, Albania has a lot to improve on *Payment* and *Time* indicators when it comes to *Paying Taxes* category. While business in Albania have to make a total of 34 payments of taxes during the year, countries in Europe and Central Asia have to make 20.5 payments, while OECD countries only 11.8 payments. In addition business in Albania have to spend 357 hours /year for preparing, filing and paying (or withhold) the corporate income tax, value added or sales tax and labor taxes including payroll taxes and social contributions, while the OECD countries have to spend half of such amount of time. Therefore, simplification of the tax system and legislation as a whole, has become necessary to promote further improvements.

- *Frequent changes to the tax legal framework do not help businesses in consolidating their correct approach to tax system.*

Frequent changes to the legislation is another raised issue that puts in risk the business environment stability. For example, based on GTD website, Law No.9920 dated 02.09.2008 “On Tax Procedures” and its Instruction No.24 dated 02.09.2008 have been amended 11 (eleven) times, while its 12th (twelfth) amendment has been recently approved by the Government and it will soon enter into force. In addition, limited consultation and information to the taxpayers about the changes on tax legislation remain a real issue (e.g. 12th amendment mentioned above was not subject to prior consultation with stakeholders).

Even in those cases when the legislation is clear enough to be interpreted in an adequate manner, there is a lack of standardized interpretation by the tax administration structures, while treating same or similar practices. This has been a clear outcome from the interviews conducted by the Secretariat with several business associations, companies and experts.

⁶ “Doing Business” Report (2015), by World Bank

4.2 Tax audit procedures

- *The Audit Reports prepared by the Tax Administration impose intentional penalties while arguments provided by the inspectors lack clarity.*

The detailed process of tax audit and inspection is explained in the Articles 80 and ongoing of the Law No.9920 dated 19.05.2008 “On Tax Procedures in the Republic of Albania” (as amended). These articles provide the rules beginning with the Notification made to the taxpayer prior to the tax audit, up to the moment that the Audit Report is delivered to the taxpayer. The Secretariat included in its Survey a question on the clarity of the Audit Report with regard to the content, legal references used and conclusions. The outcomes of the Survey show that large companies in particular from Service and Trade sectors find as problematic the quality of the audit reports, their legitimacy and accuracy. Whereas companies operating in the Industry sector do not indicate any notable concern related to the report of a tax audit.

Penalties resulting from a tax audit/inspection have been mentioned specifically in the comments section of the Survey, where respondents also have provided concrete examples of such *abusive application of fines*. The majority of the respondents have commented that after a tax audit/inspection it is normally issued a penalty that is intentional, it is based on wrong interpretations of the law and eventually to exercise pressure to business for paying bribes.

- *The current legislation in force does not set up a timeframe for Notifications to the taxpayers prior to a Full Tax Audit.*

The respective Articles 81 of the Law No.9920 “On Tax Procedures” and Instruction No.24 of MoF, do not provide protection to the taxpayers against abusive *ad-hoc* and *on-site inspections* that might be performed by tax administration. Such timeframe for prior notification would reduce the abusive and discretionary decision of Inspectors and it would also provide reasonable time at disposal to the taxpayer to prepare the massive documents and allocate the necessary human resources to the tax audit. This change will be especially relevant to big taxpayers and it will help in creating a positive environment for taxpayers and a good partnership with tax administration.

- *According to the above Law No.9920 “On Tax Procedures”, risk indicator factors should be the basis for a tax audit selection. However, in the legislation it is not provided the definition and main composition of such risk criteria/factors, thus creating confusion to the taxpayers on the purpose of a tax audit. In addition, the main criteria used by the System are not known to the taxpayers.*

More explanations on general risk criteria/factors are found in the internal working document of tax administration such as Regulation No.1, dated 28.04.2009 “On Selection Procedures for Tax Audit” and the “Manual on Tax Audit” for Inspectors, which are documents for public use, but still not tailored on sectoral basis.

- *Non-effective treatment of recommendations provided by the TA with regard to tax audit procedures*

The issue regarding the incorrect procedure of tax audit system comes from TA office, mentioned in its annual Reports for 2013 and 2014. In the majority of cases, the recommendations of the TA Office for revising a specific audit procedure is charged to the same inspector whose report is contested. Such practice nourishes to the taxpayer distrust on the functioning of complaint system within tax administration as well as on the role of TA Office. Only 30% of recommendations of TA Office are considered by the Tax Administration.

4.3 Tax appealing procedures

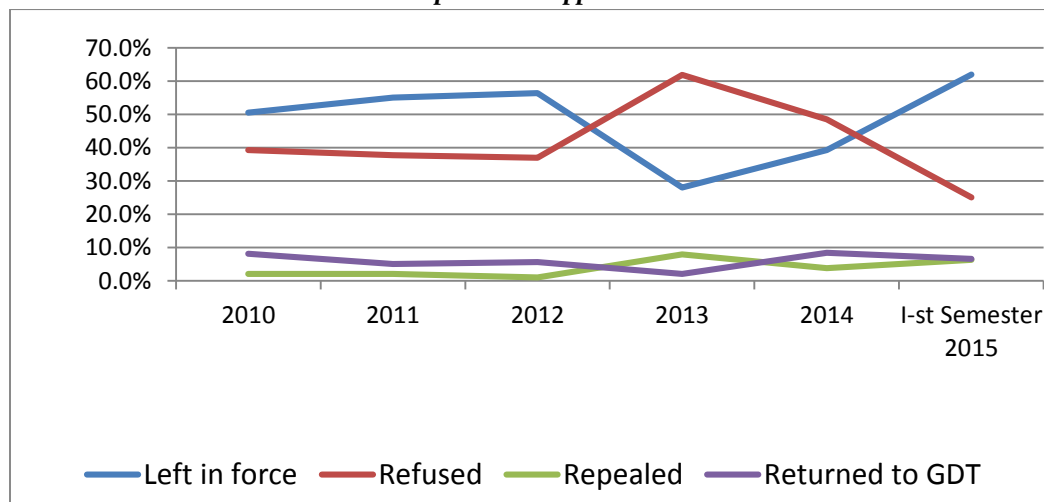
- *Appeal procedure to the TAD is bureaucratic and non-flexible because the taxpayers are required to pay the total amount of the tax liabilities and the related interests, although penalties are not included.*

There have been some improvements with the amendments performed during 2014 to the Law No.9920 “On Tax Procedures” (as amended) related to the access to appeal, under the Article 107. According to these changes, the taxpayer is given also the right to provide a *bank guarantee*, and not necessarily to pay 100% of the due tax liability, by not losing thus its business liquidity. Still the procedure is not flexible enough and simple to be followed by the taxpayers while there are still margins for improvements.

- *Most of the businesses have replied that the current appeal procedure against TAD is not effective and they have no trust in TAD, as it decides in almost all the cases in favor of RTDs.*

Looking at Graph. 3, it is noted a general trend of decline in the number of appealing cases by the companies. The percentage of the cases repealed or returned from TAD to GTD is still very low (an average of 4% for the repealed cases and 6% for returned cases), while there is a tendency to keep effective the decisions of the RTDs.

Graph 3. Tax Appeal Data



Source: Tax Appeal Directorate

- *The actual procedure under which the RTDs appeal in the Administrative Court against the decisions of TAD (considering that both are under the jurisdiction of the Ministry of Finance) it is not in line with the “good practices” principle to be followed by the administration.*

Despite the fact that TAD changes only a small percentage (3%-4%) of the decisions of RTD, the right of the RTD to appeal in court such decisions puts the taxpayer under a discriminatory position and clearly under the pressure of tax administration. It is not the first time that this issue has been raised as a real problem even by the businesses. The Secretariat took note of all the previous and current comments provided to the Government and it also observed that in its Survey, 90% of big companies and 67% of small companies assess the appeal procedure as ineffective.

The issue whether the decision of TAD should be considered as ultimately binding to the parties involved in an administrative appeal process was evaluated by the Secretariat. The issue has been analysed on the basis of the current legislation in force and jurisprudence of the Constitutional Court⁷. It was concluded that the Code of Administrative Procedures provisions prevails on the Law No.9920 “On Tax Procedures”, therefore the correct interpretation is that Decision of the TAD should be ultimately binding to RTDs. To this extent it does not make sense for TAD decision to be subject of further appeal by RTD.

4.4 Human resources capacities

- *Lack of specialized inspectors as per business profile. Need for improvements in the human resources capacities.*

Tax inspectors, responsible for performing tax audit to the taxpayers, are appointed based on the procedure defined under the article 5.5 of the GTD Regulation, No 1 dated 28.04.2009 “On Tax Audit Selection Procedures” based on the following criteria:

- a) Conflict of interest;
- b) Nature and complexity of the taxpayer;
- c) Professionalism of the tax inspector.

Taxpayers claim that in many cases the tax inspectors have difficulties in understanding the nature and complexity of taxpayers’ business operations and usually intend to simplify these operations by wrongly qualifying and analyzing them. Specific concerns on ethics and communication of inspectors, their competencies and logistical skills were presented in the IC Survey (2015), especially by companies in the service sector (in average 72% of the respondents) and trade sector (in average, 61% of the respondents). In big companies, an inspector spends on average approx. 116 hours/2 years for an inspection (IFC, 2013)⁸. As a result, this long procedure becomes time-consuming for both parties and in many cases results in incorrect reassessment by the tax inspector.

⁷ Decision No.2 dated 03.03.2010

⁸ “Tax Compliance Cost” Report (2013), by IFC

Referring to the Director of TAD, the capacities of this Directorate are very limited either in the number of staff and/or on its expertise.

There have been some improvements during the last two years, in the direction of educating and training the existing and new employees of tax administration, through specific programs and training sessions performed by The Center for Training of Tax and Customs Administration- Fiscal Academy⁹. The trainings have been focused more on the general aspect (Training Center for Tax and Customs Administration)¹⁰.

It is encouraging that incentive packages for staff motivation have been mentioned in the Law No.9920 dated 19.05.2008 with the amendments of 2014, but follow up on the endorsement is further required.

4.5 Transparency and awareness raising of taxpayers

- *Need to increase the transparency standards and partnership between tax administration and business.*

According to the “Tax Inspection” Survey (2015) performed by the Secretariat, the GTD website remains the main source of information, assistance and knowledge for taxpayers and other institutions related to the tax system in Albania. Although, its usefulness and efficiency is highly appreciated by the Survey responders, small and medium companies still reported difficulties in accessing and finding the relevant clarifications in the website.

Although GDT publishes regularly its Technical Decisions and TAD has recently started to publish some of its own decisions, there are still controversial interpretations of the laws and by-laws by the structures of the Tax Administration and its officials while evaluating the same practices.

Moreover, according to the TA Office, the taxpayers, subject of the simplified small business tax, are not aware on their tax liabilities and not properly informed on their rights. Very few respondents from small and big companies have attended a training organized by the tax administration. Trainings have been conducted mostly for the online declaration of the tax liabilities since January 2015.

The role of TA Office was considered as vague by the respondents of “Tax Inspection” Survey (2015) and it was specifically requested to be more active and more independent from GTD. Increase of awareness is demanded by the businesses also by making use of other media and informative means. Provision of English translation of the laws and relevant interpretations in the GTD website was considered as relevant.

⁹ The Academy is a public legal entity under the MoF established with the Council of Ministers Decision No.1264 dated 16.12.2009.

¹⁰ Based on the reports on <http://www.qtatd.gov.al/>

4.6 Other findings

Informality on tax system: Following the recent campaign of the Government on fighting informality in tax system, one question for inciting debate was included in the IC Survey to get a first opinion on what are the main factors that may lead to an informal activity. Although the ranking may vary from small to big companies as well as per sectoral bases, still the main identified factors selected were VAT, Tax legislation and Relations with Tax Administration. This preliminary finding will be subject of a deeper analysis to be conducted by the Secretariat in the context of the upcoming December IC Meeting, where informality is one of the agenda item.

Additionally, tangible concerns have been delivered by *Tourism sector* on unclear tax audit procedures and seizure and confiscation cases by tax inspectors, who do not take into account the sector's specifics.

V. RECOMMENDATIONS

The main goal of the Paper is to provide some practical and useful suggestions and recommendations for improving the Tax Audit system in its both dimensions, legal aspect and institutional perspective. This will facilitate at optimum level the doing business climate in Albania. The recommendations provided hereby, refer to the short and medium timeframes in order to support a sustainable improvement of the tax audit system, along with the establishment of a reliable and constructive bridge of communication between the tax administration and the businesses.

The main legislative changes should substantially refer to the following:

1. Law No. 9920, dated 19.05.2008 "On Tax Procedures in the Republic of Albania" (as amended) – (Law 9920);
2. Instruction No.24, dated 02.09.2008 "On Tax Procedures in the Republic of Albania" (as amended) – (Instruction No.24);
3. Regulation No.1 of GTD, dated 28.04.2009 "On Tax Audit Selection Procedures";
4. Internal Manual of Inspectors.

The recommendations are divided in three main directions affecting in all perspectives the performance of the tax audit system in Albania.

5.1 Changes in the Legislation

To be approved in the short term:

1. Government should ensure a fully transparent system of tax inspections, by publishing the main risk indicators/criteria used by the Electronic System of Risk to identify the businesses with risk and therefore subject to Inspections. The criteria used

should be tailored and customized per industry (tourism, services, banking, textiles, etc.) and size of the business. While obviously the formula used by the system for the selection should remain strictly confidential. The main risk indicators/criteria used by the Electronic System of Risk might be considered to be mentioned in general at the Article 80 paragraph 4 of the Law No.9920. This change would increase transparency standards of the tax administration while selecting the business subject to inspection and would reduce the rumours according to which tax administration selects the business based on subjective criteria and not objective ones.

2. In addition, subsequent changes have to be performed and approved in the Instruction No.24, and internal Manual on Audits where to be defined clearly and in more details the following:
 - *Risk factors for automatic risk selection system.* The risk factors should be more detailed and transparent with the taxpayers without disclosing the specific formula and other quantitative indicators. The automated risk-based selection system should make use of all information collected by tax authorities (through tax returns, VAT books and financial statements uploaded by taxpayers) but also of the information received by third parties. The risk criteria should also take into consideration and be tailored as per Micro and Small business activities (e.g. trade, services, manufacturing, transport, hotels, etc.)
 - *Interventions in the Electronic System of Risk.* Tax administration structures/inspectors cannot intervene case by case in the Electronic System of Risk in order to determine the business subject of Inspection. If interventions for improving the System become a must, it should be based on objective criteria clearly stated in the Instruction No.24. The same for the frequency of such interventions in order not to leave room to tax administration for discretionary abusive interpretations while selecting the businesses subject of inspection.
 - *E-audit procedures.* To be conducted by the tax inspector in distance using the information and sources already being collected by the tax administration structures and other public institutions that may include and perform the following:
 - ✓ Cross check the declaration made in the customs authorities with the declaration available at tax authorities;
 - ✓ Analyze the financial statements and other documentation/information provided by the taxpayer;
 - ✓ Analyze taxpayers' data in order to propose whether or not the taxpayer should be subject to tax verification procedures.
3. Article 81 of the Law No.9920 does not set up a timeframe for prior notifications to the taxpayers as related to the tax audit. Law No.9920 and Instruction No. 24 under their respective Articles 81, should set up a timeframe of 10 calendar days for prior notification to the taxpayer in cases of tax audit, except for the cases of in-site inspections. This procedure would reduce the abusive and discretionary decision of Inspectors and also would provide reasonable time at disposal to the taxpayer to

prepare the massive documents and allocate the necessary human resources to tax audit. This change would be especially relevant to big taxpayers and it would help in creating a positive business environment to the taxpayers and building partnership with tax administration.

4. Additionally to the above, the following amendments should be made to the Article 81 of the Law No.9920 and to the Instruction No.24 with regard to the elements to be included in the Prior Notification to a Tax Audit.
 - *The Inspector should specify in the notification the documentation that will be required to the taxpayer during the tax audit.*
 - *The Inspector should specify in the notification the people that will be interviewed.*
 - *The Inspector should specify in the notification any other analysis that tax inspector would like to have an earlier input.*
5. The current procedure under which the RTDs appeals in the administrative courts against the decisions of TAD is not effective and it penalizes taxpayers. In this context the following are recommended:
 - 1) Abrogation of Article 109/3 of the Law No.9920. The decisions of TAD as the upper administrative unit to decide on Appeal cases, should be automatically binding to the RTDs and not subject to further appeal to the Administrative Court.
 - 2) The Amendments to the Law No.9920 which can effectively increase TAD independence and separation of its function from the structure of GTD should be considered as a priority.
6. The alternative of paying in advance, prior to the initiation of an Appeal procedure, 100% of the tax due remains a strong barrier to the appealing process. Alternatively to the “Bank Guarantee” as provided under the Article 107, the taxpayer should be legitimated to initiate the Appeal procedure, by paying only 50% of the tax due (excluding interests). Interest will of course continue to accrue on the remaining unpaid 50% of the tax due.
7. Amendment of the legal provisions on *re-audit*. TA Office should be considered to have an active role during the re-auditing procedures described under the Article 85 of the Law 9920. It is recommended that the re-auditing to be performed by the tax administration should be made only upon receiving prior approval of the TA Office. In this perspective, the competencies of the TA in the light of Law No.9920 should be re-dimensioned, aiming to enlarge the role of the TA in the tax audits as well as to provide further guarantees to the business from abusive actions of tax administration.

To be approved within a medium term:

8. The adoption at the highest level of the 90% electronic risk based system in all kind of audits, not only for the VAT reimbursement. The Electronic System of Risk could focus not only on VAT but also on other types of taxes (e.g. Tax on Income and Profit) for the automatic selection. Despite the current efforts undertaken, due the complexity of such application, GTD needs to consider a plan of action in this direction for the next 3 years.

5.2 Tax Administration

To be approved within a short term:

1. It is recommended that specialized tax inspectors are appointed based on the taxpayer's profile (small, medium and large taxpayers) and sectoral specifics. In addition, it is necessary to improve the capacities and resources through annual training sessions as well as remuneration packages of inspectors, in particular of those working in TAD and VIP Taxpayers Directorate.
2. Although GTD publishes regularly its Technical Decisions and TAD has recently started to publish some of its own decisions, there are still some controversial interpretations of the laws and by-laws by the structures of the Tax Administration and its officials while evaluating the same practices. Many replies to the taxpayers lack clarity and simplicity. The above could further lead to the increase of the perception on corruption practices.
 - 1) GTD and TAD should consider increasing the capacities on legal analyses and unify their own practices, as well as to reflect the final decisions of the Courts for similar cases;
 - 2) GTD to prepare and publish in its official website the Annual Commentary of Cases. The aim of this document should be to consolidate and unify the different interpretations for the same practices.
3. Tax inspectors should document and share with the taxpayers any finding during the tax inspections and tax audits. Although, the sharing of tax audit findings with taxpayers is defined specifically in the law, this remains still a concern and therefore administrative measures have to be taken for the inspectors that do not comply with this rule. Clear penalties should be provisioned also for members of tax administration structures when committing administrative offences.
4. Tax inspections (risk based selected) should be done in teams of 2 or 3 inspectors, in particular in VIP businesses and in the comprehensive and complex audits.

To be approved within a medium term:

5. To increase the expertise of inspectors through continuous training in tax and accounting by professional and relevant organization such as Institute of Approved

Accounting Experts (IEKA), and national/ international reputable tax and accounting companies.

6. Joint trainings with tax inspectors and businesses on sectoral bases can be developed by the Tax Administration.

5.3 Transparency and awareness raising

To be approved within a short term:

1. Publication of GTD and TAD annual reports as means of increasing the standards of transparency to the public;
2. TAD decisions should be published systematically (protecting confidentiality);
3. The website to provide information also in the English language;
4. 100% availability/accessibility of the website;

To be approved within a medium term:

5. Stabilization of the fiscal package and tax procedures through public consultation in order to be planned in advance by the business in their investments plans.
6. The development and publication of an annual communication program with business associations diversified by sector on tax legislation and procedures.
7. GTD should consider to develop a procedure in its information system for the electronic notification of the taxpayers (e.g. through pop up notifications/alerts) on the relevant changes in the tax legislation. This is especially convenient to small businesses which do not have the proper resources to keep up with the frequent changes on tax legislation.

ANNEX 1

LITERATURE

1. “Cost of Tax Compliance” Survey in Albania (2013), IFC-IDRA;
2. “Business Environment in Albania” Survey (2015), FIAA–IDRA;
3. Monitoring Matrix on Enabling Environment for Civil Society Development - Country Report for Albania- Project funded by the European Union 2014
4. Progress Report 2014-Albania, European Commission;
5. Business Environment and Enterprise Performance Survey (BEEPS) V Country Profile, EBRD, World Bank
6. Law No. 9920, dated 19.05.2008 “On Tax Procedures in the Republic of Albania” (as amended),
7. Instruction of MoF No.24, dated 02.09.2008 “On Tax Procedures in the Republic of Albania” (as amended);
8. Regulation No.1 of GTD, dated 28.04.2009 “On Selection Procedures for Tax Audit”
9. Law No. 91/2015 “For an addition and change to the Law No. 9920, dated 19.05.2008, “ On Tax Procedures in the Republic of Albania” (amended)
10. Law No. 90/2015 - For a change to the Law No. 92/2014, “On VAT in the Republic of Albania” (amended).
11. Note on Tax Audit (2006), OECD
12. “Paying Taxes” (2015), World Bank
13. Business Index 2014 -2015, AmCham
14. Strategic Plan for 2014-2017, GTD
15. “Doing Business” (2015), World Bank
16. III Index of Business Climate in Tourism Survey-ATA 2012
17. Articles in the media (including but not limited to newspapers, internet sources, business perceptions etc.)

ANNEX 2

LIST OF INTERVIEWED STAKEHOLDERS

1. Ms. Arjana Dyrmishi, Director of Fiscal Policies, Ministry of Finance
2. Ms. Anora Topi, Deputy General Tax Director
3. Mr. Nikolin Jaka, Head of Tirana Chamber of Commerce and Industry
4. Mr. Silvio Pedrazzi, President of FIAA and CEO Intesa San Paolo Bank Albania
5. Ms. Marinela Jazo, Executive Director of FIAA
6. Mr. Christian Canacaris, President of Albanian Banks Association and CEO Raiffeisen Bank, Albania
7. Mr. Artur Papajani, Taxpayers' Advocate
8. Mr. Flamur Lalo, Director of TAD
9. Ms. Mimoza Kalia, VIP taxpayers Director in GTD
10. Ms. Matilda Naco, Executive Director of ATA
11. Ms. Lindita Legisi, CEO of OMEGA shpk
12. Mr. Neritan Mullai, EBRD – SBS Project
13. Ms. Silvana Meko, Fiscal expert
14. Mr. Eduard Gjokutaj, Fiscal expert
15. Mr. Fatmir Kazazi, Fiscal expert
16. Ms. Endrita Xhaferaj, Secretary General, AAB
17. Mr. Nikolla Lera, Director of Cabinet, Ministry of Economic Development, Entrepreneurship, Trade and Tourism

ANNEX 3

LIST OF FOCUS GROUP PARTICIPANTS

1. Ms. Arjana Dyrnishi, Director of Fiscal Policies, Ministry of Finance
2. Ms. Anora Topi, Deputy General Tax Director
3. Mr. Artur Papajani, Taxpayers' Advocate
4. Mr. Flamur Lalo, Director of TAD
5. Ms. Mimoza Kalia, VIP taxpayers Director in GTD
6. Ms. Matilda Naco, Executive Director of ATA
7. Ms. Silvana Meko, Fiscal expert
8. Mr. Eduard Gjokutaj, Fiscal expert
9. Mr. Bashkim Sykja, Director of Promotion of Enterprises, Ministry of Economic Development, Entrepreneurship, Trade and Tourism

ANNEX 4: QUESTIONNAIRE

ASSESSMENT ON TAX INSPECTION IN ALBANIA

About the Questionnaire

This questionnaire is based upon issues raised in the last assessments on tax inspections performed by IFC, FIAA, ATA, and business associations. It also considers the following legal base:

1. Law No. 9920, dated 19.05.2008 “On Tax Procedures in the Republic of Albania” (amended);
2. Instruction of the Minister of Finance No. 24 dated 02.09.2008 on Tax Procedures in the Republic of Albania (amended);
3. Regulation No. 1, dated 28.04.2009 “On Selection Procedures for Inspection” by the General Tax Directorate;
4. Manual on Tax Audit by the General Tax Directorate.
5. Decision of Council of Ministers no. 922, dated 29.12.2014 “On the obligatory declaration of tax declarations and other documents, only through electronic form”.

The findings and suggestions resulted from this questionnaire will be discussed in the next IC meeting on 30th September 2015. Recommendations approved by the Investment Council will be submitted to the Albanian government for further consideration. *This could entail legal and regulatory amendment or reviews.*

The completed questionnaire may be sent by e-mail to info@investment.com.al or directly filled in online at: www.investment.com.al by **9th September 2015.**

I. General

1. Select one of the areas below which better defines the main economic activity of your business:
 - ☐ Mining and quarrying
 - ☐ Manufacturing Industry
 - ☐ Electricity, gas, steam and air conditioning supply
 - ☐ Water supply; sewerage, waste management and remediation activities
 - ☐ Construction
 - ☐ Services
 - ☐ Wholesale and retail trade;
 - ☐ Transportation and storage
 - ☐ Hotels
 - ☐ Information and communication
 - ☐ Architectural and engineering activities;

- ☐ Travel agency, tour operator
 - ☐ Other (please specify _____)
2. The main shareholders (owning more than 50%) of your business are:
- ☐ Albanian
 - ☐ Foreign
3. Select size of your organization according to your last year turnover:
- ☐ Small (2 – 8 Million ALL)
 - ☐ Medium (8 – 50 Million ALL)
 - ☐ Large (over 50 million ALL)

II. **Effectiveness of the Tax Inspection**

4. Select the nature of tax inspection and define the number of times that your company was inspected during each respective year:

<i>Nature of audit</i>	<i>Number of inspections</i>		
	<i>2013</i>	<i>2014</i>	<i>2015</i>
☐ Full Tax Audit			
☐ Fiscal Visit			
☐ On site inspections			
☐ Re audits			

5. Define the time duration of the last tax audit/inspection:
- ☐ 1 week
 - ☐ 1 – 4 weeks
 - ☐ 1 – 3 months
 - ☐ 3 – 6 months
 - ☐ More than 6 months (specify) _____
6. Evaluate in the following the clarity of the **documents** provided by the Tax Administration entailed during a tax inspection.

Very clear	Clear	Somewhat clear	Unclear	Very unclear

7. Evaluate in the following the professionalism of the tax inspector with regard to:

<i>Tax Inspector's professionalism</i>	<i>Very professional</i>	<i>Professional</i>	<i>Somewhat professional</i>	<i>Unprofessional</i>	<i>Very unprofessional</i>
Behavior/Ethics					
Communication					
Competencies/Specialization					
Logistics support					

8. Evaluate in the following the clarity of the Tax Audit Report issued by the Inspector in the end of the Tax Audit with respect to:

<i>Clarity of Tax Audit Report</i>	<i>Very clear</i>	<i>Clear</i>	<i>Somewhat clear</i>	<i>Unclear</i>	<i>Very unclear</i>
Content					
Format					
References					
Findings/conclusions					

III. Awareness of the Taxpayers

9. Have you undertaken any Tax Appeal procedure during the last 3 years?

- ☐ Yes
☐ No

If yes, please evaluate in the following the effectiveness of the procedure.

Very effective	Effective	Somewhat effective	Ineffective	Very ineffective

Please provide any suggestions on the role and procedures of Tax Appeal Directorate (DAT)

10. Based on your experience, the adequate implementation of the tax legislation by the businesses is related mostly to the:

- ☐ Clarity of legislation
☐ Interpretation of the legislation
☐ Capacities of the tax administration
☐ Information of the businesses

11. Evaluate in the following the clarity of the content of the information provided by the Tax Administration related to the legislation on tax procedures.

Very clear	Clear	Somewhat clear	Unclear	Very unclear

12. Evaluate in the following the clarity of the explanations related to the legislation on tax procedures provided by the Tax Administration.

Very clear	Clear	Somewhat clear	Unclear	Very unclear

13. Are you aware that the selection of taxpayers to be inspected will be done through the new risk based system?

- ☐ Yes
☐ No

14. Have you been trained in the last years by the Tax Administration on the implementation of tax legislation?

- ☐ Yes
☐ No

If yes, please provide as many details as possible

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15. Evaluate in the following the satisfaction with the e-TAX services as relates to:

<i>E-tax</i>	<i>Very satisfied</i>	<i>Satisfied</i>	<i>Somewhat satisfied</i>	<i>Unsatisfied</i>	<i>Very unsatisfied</i>
Access to electronic filling					
Reliability of the data					
Accuracy of the data processing					

16. Rank three of the most important factors related to the tax system that may lead to informality (1-most important and 3-important):

- ☐ Tax legislation
- ☐ VAT
- ☐ Tax on Profit
- ☐ Tax on Personal Income
- ☐ Social Security Contributions
- ☐ Tax Auditing and Inspections Procedures
- ☐ Relations with tax administration

IV. Any additional comment:

(In this section please feel free to provide any feedback you might have from your experience as a taxpayer and/or from your perception on each of the areas below.)

❖ *Formal and informal penalties imposed as a result of a tax inspection:*

❖ *Suggestions for minimizing corruption practices in a tax audit:*

❖ *Role and support of the Taxpayer's Advocate Office:*

❖ *Sources of information on the tax legislation:*

❖ *Other*

For any further question please contact us at: info@investment.com.al.

Note: About Investment Council & Secretariat: The Investment Council and its Secretariat are established with Decision of the Council of Ministers No. 294 dated 8 April 2015. The Investment Council is a platform set up by the Albanian authorities with support from the EBRD to intensify the dialogue between the government and the private sector, improve the business climate and promote good governance.