

REFORMATION OF THE ALBANIAN EXCISE LAW IN THE CONTEXT OF ALBANIAN INTEGRATION IN THE EUROPEAN UNION.

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Abstract

*The integration process of Albania in the European Union demands different changes on a large range of issues, particularly on the legal reforms and the approximation of legislation with *acquis communautaire*.*

In this context, one of the Albanian Government challenges is the reformation and harmonization of the fiscal system and policies with the EU legislation.

This paper aims at presenting a panorama of the new Albanian Law no.61/2012, date 24.05.2012, “On excises duties in the Republic of Albania”, its approval process, purposes, benefits and achievements.

By analyzing these legal amendments this article will try to emphasize the improvements in excise collection, control procedures and the appealing system. By providing a detailed description of the main issues, this paper will focus on the effectiveness that this reform in the excise tax has provided to the principles of taxpayers equal treatment and transparency, in order to fight tax evasion and reduce informal economy.

This presentation intends to offer a comparative overview between this new legislation and the previous excise law, trying to present its main changes due to the approximation and convergence with the EU directives and regulations.

Conclusions summarize the efforts to accomplish approximation of the Albanian excise legislation towards European legislation, as a thorough reform along the Albanian integration process.

Key words: *excise, legislation, approximation.*

1. Introduction.

The tax system in Albania, a part of which being the excise tax, constitutes the main element of the economic policies pursued in a country that operates based on the principles of the market economy. The Albanian current situation, within the integration process positioning viewpoint, with the signing of the Stabilization and Association Agreement, requires the recognition of the community legislation of the EU and the procedures to be undertaken in order to complete the process. To this reason, the study delineates a description of the domestic legislation, which regulates the abovementioned indirect tax and the efforts undertaken to assure the compatibility to the *Acquis Communautaire*, in the area.

The taxes on all EU member states are part of each specific country public finances. Priorities on the expenditure items, types and levels of most taxes covering the costs, despite of an internal market creation and the common policies, still remains a responsibility of each member state. This policy must ensure compliance with the European single market and the free movement of capital, within the framework of striving not to deform the market, preventing and curbing investments or job creation.

The need to conduct the excise tax fiscal harmonization within the EU countries stems from two main purposes:

- The establishment of the four freedoms: free movement of goods, people, services and capital and
- The internal market realization.

The legal basis of indirect taxes harmonization is provided in Section 91-93 of the European Economic Treaty¹.

Article 90 prohibits the direct and indirect discrimination of foreign products and simultaneously provides direct and indirect protection of the domestic market products.

Article 93 provides the harmonization in all the Community member countries of the indirect taxes to the extent deemed necessary to the establishment and functioning of the internal market.

Within the signing framework of the Stabilization and Association Agreement (hereinafter referred to as SAA), Albania has undertaken a number of initiatives among which, the one on the indirect taxes approximation, among which an important place occupies the excise. Pursuant to **Article 70** of the SAA, Albania shall endeavor to ensure that its existing laws and future legislation be gradually made compatible with the Community's *acquis*.

Article 98 of the SAA provides that: The Parties shall establish cooperation in the taxation field including the measures aiming at strengthening the following reforms in the fiscal system, in order to ensure the effectiveness in tax collection and the fight against tax evasion. In reference and function to government policies is designed the SAA Implementation Plan pertaining to the period 2012–2015. Regarding the Excise, in the chapter on "*Customs and*

¹ known as the **Treaty of Rome** and signed on 25 March 1957, was officially the *Treaty establishing the European Economic Community* (TEEC).

Taxation" is provisioned the undertaking of legal initiatives towards harmonization of the fiscal legislation in the excise field to the *acquis Communautaire*.

Within the framework of IPA Program 2007 – the Excise Subcomponent, is already achieved the drafting phase of the new excise law and regulations on its implementation, which has provide not only the improvability of the excise tax administration methodology, but has enabled the completion of a very important standard, within the framework of our country's integration to EU.

2. The description of Albanian legislation on excise.

The excise Law No.61/2012 can be considered as a cornerstone in the construction of an effective collection and administration system of this tax in the Republic of Albania. In contrast to the previous law of the year 2002, this regulatory act describes in detail the procedures of manufacturing, maintenance, payment and control, of goods which are subjected to the excise duties.

This law transposes the latest directive of the European Union No. 2008/118² "Concerning the general arrangements for excise duties", a binding directive to all member states, which is applied in the EU countries from January 1-st, 2011. It is worth mentioning the fact that the excise law is also based on a number of other EU Directives which regulate the specific elements of excise products, such as: the Council Directive No. 2003/96/EU, of 27 October 2003, which restructures the Community framework on the taxation of energy products and electricity; Directive 92/83/EEC, of 19 October 1992 "On the harmonization of the excise structures on alcohol and alcoholic beverages"; Directive 92/84/EEC, of 19 October 1992 "On the approximation of the rates of excise duty on alcohol and alcoholic beverages"; Directive 92/12/EEC, of 25 February 1992, "On the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products" and the Commission Regulation EC 2008/450, "The Modernized Customs Code".

2.1 Excise Administration.

The fiscal policy and administration are closely bound to one another. In order for the fiscal policies to be successful and their implementation to result the most effective, it is needed attention towards the administrative duties and the procedural measures charged to the structure handling its administration. One of the excise administration priorities in Albania is the existence of an information system based on a sustainable development. However, given that the economic development is increasing, mainly in the private sector, the existence of a specialized, qualified and trained staff is deemed to be an essential requirement.

The basic requirements to successfully administer excise are:

- An appropriate system to identify the taxpayers;
- A simple operating form of excise duty payment;
- An effective assistance program to taxpayers;

² Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC;

- An electronic database holding updated information;
- Finally, an effective applicable system of penalties.

Regardless of the denomination, the indirect tax, particularly the excise collection in import as well as manufacturing, is one of the core and traditional activities of the customs' administrations of the EU and far beyond countries. Given the above, namely through this law was actualized to transfer responsibilities for excise duties from the tax administration to the customs administration.

Excise tax administration by the customs administration presents several advantages, which have increased the efficiency in collecting the obligations from this indirect tax. Some of the positive aspects are³:

1. The Customs Administration has a long experience in licensing, supervising and controlling of customs warehouses, where are deposited in a suspension arrangement of duties the excise goods, prior their released to consumption or taking another destination.
2. The Customs Administration possess the indispensable experience and expertise in granting authorization, supervision and control of the below processes:
 - a. Importation of raw materials;
 - b. Processing according to the technological cards;
 - c. Introducing the finished product in the fiscal warehouse regime and its release for consumption after the fiscal obligations are extinguished.
3. Customs authorities have a long experience in the administration of customs guarantees in all its forms, guarantees which are required and checked for the duty suspension regimes.
4. The customs authorities are able to manage in a closed circuit, the excise tax subjects and fiscal stamps and apply during their activities risk analysis based controls, using the computing module.
5. Customs Administration has a computerized system, which allows programming for administration, monitoring and excise collection.

2.2 Comprehension and payment of the excise duty.

Excise duty is a tax applied over the excise goods, manufactured and imported, which are released for consumption in the territory of the Republic of Albania⁴. Products subjected to this indirect tax are:

- a) Energy and electricity products;
- b) Alcohol and alcoholic beverages;
- c) Tobacco and its by-products;

In contrast to the previous law no. 8976, dated 12.02.2002⁵, on the basis of which the excise

³ Discussion of draft ““On the Excise duties in the Republic of Albania”, in the Parliamentary Commission of Economy and Finance.

⁴ Article 2, of Law No.61/2012, date 24.5.2012, “On the Excise duties in the Republic of Albania”.

payment was related to the production timing and import of excise goods in the Republic of Albania territory, the current legislation denotes essential changes in determining the payment moment of the excise duty. This change is not only to ensure compliance with the Community legislation⁶, but bears as its objective the establishment of a fair and transparent relationship between the customs administrations and the taxpayers, the reduction of the informal sector and the increase of efficiency in this tax collection.

The excise duty to taxpayers arises in the below cases:

- a) At the time of releasing for consumption, excise goods which mean:
 - i. Exit from duty suspension arrangement;
 - ii. Retention of the excise goods outside an excise duties suspension arrangement;
 - iii. Production of excise goods beyond a duty suspension arrangement;
 - iv. Importation of excise goods.
- b) Where are ascertained, violations to the provisions of this law or ascertainment of exceeding of allowed wastage.

The excise tax is paid at the releasing time of the excise goods from an excise duties suspension arrangement. The excise duty is paid via a prepaying account, which is credited on a daily basis or periodically.

The obligations are automatically calculated based on the electronic declaration system.

2.3 Exemptions from the excise duty.

Exemptions from the excise duty are delineated as socio-economic policies. Exemptions from the excise duty in our legislation are reduced and acceptable. Excise goods are excluded from payment of excise duties when they are intended to be used⁷:

- a. For official and personal purposes, within the framework of the diplomatic missions and the international organizations, under the conditions defined in the international conventions and agreements;
- b. For the armed forces of any member country of the North Atlantic Treaty Organization (NATO);
- c. Excise goods imported for personal consumption;
- d. The exported excise goods;
- e. Excise goods placed under customs suspension arrangement;
- f. Energy products with dual use and the ones used in mineralogical processes;
- g. Power fuel for fishing vessels according to the quantities, conditions and criteria established by a Council of Ministers Decision;
- h. Imported oil by-products for own needs, from the oil exploration companies;

⁵ Paragraph 1, Article 22, of Law no. 8976, date 12.12.2002, "On the Excise duties in the Republic of Albania", amended.

⁶ Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC.

⁷ Article 10 of Law no.61/2012"On the Excise duties in the Republic of Albania".

- i. Power fuel used by aircrafts of international airlines, for trade / international transport, with the exception of those aimed for private or national use.

2.4 The Excise Refund.

One of the strengths and advantages the excise tax displays is also the exports encouragement and the domestic investment promotion. This is achieved via the reimbursement of the paid excise mechanism by all the taxpayers, whose products are export destined and the entities who invest to their business development.

Article 14 of the excise law provides for the refund payment cases of this indirect tax. The excise duty is refunded:

- a. To the paid excise tax goods, which are exported outside the territory of the Republic of Albania;
- b. When the amount of excise stamps affixed by automatic process is destroyed and becomes unusable;
- c. To the power/heating fuels (combustibles) used by entities, which build sources of electricity production, with an installed power of not less than 5 MW per source;
- d. For fuels consumed in heated greenhouses, for the production of industrial and agro-industrial products;
- e. To the production and maintenance of bio-fuels.

2.5 The guarantee of the excise duty.

One of the innovations of the excise law relates to setting the taxpayers duty in order to ensure the fulfillment of the excise duty⁸. By this guarantee issuing the taxpayers obtain:

- a. Movement or circulation of products under the suspension of excise duty arrangement;
- b. Manufacture or depositing of products subjected to the excise law.

To a debt (excise duty), the customs authorities may require only a guarantee. The amount of the guarantee the taxpayer should provide amounts at 100% of the total of the excise duty value of the stored products and for all the other operations under excise duty suspension arrangement. The law provides the possibility of a comprehensive guarantee, which serves in guaranteeing two or more operations which result in generating excise duty.

How is the guarantee attained:

- a. For the storing fiscal warehouses shall be guaranteed the amount of the excise duty on production in stock condition.
- b. For a production fiscal warehouses shall be guaranteed the average estimated value of a production cycle with the right of periodical correction.
- c. Circulation under duty suspension of the ready-made products intended for storing fiscal warehouses is realized through a special guarantee, debited on departure and credited on

⁸ Unit IV of Law no.61/2012 “On the Excise duties in the Republic of Albania”.

arrival. This guarantee shall be provided by the authorized warehouse keeper or by his representative.

The guarantee may be granted via the following forms:

- a. Cash deposit, which shall be made in the official currency and
- b. Bail whereby the guarantor, shall undertake in writing to pay jointly and/or severally with the authorized warehouse keeper, the guaranteed debt amount that shall be paid.

The person, who is required to provide the guarantee, is free to choose among the types of guarantees, which shall be approved by the customs authorities.

The guarantee shall not be released until the excise duty to which this guarantee is issued, has not been paid or can no longer arise. Once the debt is partly settled or may arise only in respect of the part of the guaranteed amount, at request of the concerned person, only the respective part of the guarantee is released.

2.6 The electronic management of the excise goods movement.

Aiming at meeting the community standards, related to, the under suspension movement of excise goods, the new excise law ensures supervision via the administrative documents declaration of the complete transactions chain in the movement of goods under suspension of the excise duty, entry/exit in the Fiscal Warehouses of the raw materials and ready-made products, payment/guarantee of duties and the movement of the excise goods with paid duties⁹.

All products subjected to the excise duty, moving under a duty suspension arrangement within the country, shall be accompanied by an administrative document, drafted by the consignor. This document may either be an administrative document or a commercial document.

Excise accompanying document is used to achieve these goals:

- a. Products entrance from the domestic market to the fiscal warehouse;
- b. Releasing for consumption of the duty-paid excise goods;
- c. Movement from a fiscal warehouse to the other, near an entity exempted from excise payment or in a customs export regime and /or suspending regime;

2.7 Tax administration decision –making and the right to appeal.

The provisions of the excise law, have envisioned the duty of the customs administration to decision–making regarding the application of excise legislation in order to ensure equality and transparency¹⁰. The decision shall be taken within 45 days from the application day of the excise operators, who possess the right to the hearing and expression of their stance.

⁹ Article 21 of the Directive 2008/118/EC of the Commission, of December 16, 2008 “On the general modalities over the excise tax imposition” the Directive 92/12/EEC is abrogated.

¹⁰ Article 81, of Law no.61/2012 “On the Excise duties in the Republic of Albania”.

The customs authorities have the right to invalidate the decisions taken in favor of the applicants in case the applicant has submitted inaccurate information, which has influenced the decision-making process. The excise operators have the right to appeal against the decision of the customs authorities or the revocation of an undertaken decision in their favor near the General Customs Directory within 30 days of receiving notice.

2.8 Appealing procedures.

The right of access to justice system is one aspect of the right of a fair trial, sanctioned in the Article 42 of the Constitution. The new excise law guarantees the implementation of this right and, in contrast to the previous law has regulated in details the examination procedures of appealing and customs administration decision –making.¹¹ In applying the general principle of the administrative *recourse exhaustion*, the right to appeal may be initially exercised frontwards the competent customs authorities designated to this purpose and then, frontwards the judicial authorities. The appeal is reviewed by the General Customs Director within 30 days of the legal provisions violation notification.

As a basic requirement for complaint consideration is the payment from the excise operator side of the total amount of the excise duty, and also guarantee for the General Customs Directorate the total amount of sanctions applied to the violation in question. In case of application acceptance, the customs authorities shall return to the complainer the deposited amount of the excise duty, furthermore provide the guarantee release. Against the General Customs Director decision, the entities have the right to present the case in front of the competent judicial authorities.

From the excise operator's viewpoint, the payment of the excise amount duty and the penalties guaranteeing, is not an easily accepted rule, but the advance tax collection and the fine guaranteeing intend to collect the legitimate income from state, in order to fulfill its base functions. Considering that the aim of the tax system is the overall well-being, which means welfare of the individuals and community in general, and the fulfillment of the state social objectives, in my opinion the means provided by the excise legislation, does not affect the right of appeal.

3. Conclusions and recommendations.

The approximation level of the excise duty, under the circumstances when the Republic of Albania is not a member of the European Union, is partial. The projections, which do not comply with the community legislation, relate to the taxation level of the excise paying products. Specifically, electricity and natural gas are not excise taxed, unlike the practices of the EU members. The reason to not introducing the excise duty on these products relates to the economic and social development conditions of our country. Considering the fact that the excise duties is an indirect tax and posed on consumption, and that the establishment of excise duty on energy and gas will be accompanied by an increase in the price of these products.

¹¹ Article 105 of Law no.61/2012 “On the Excise duties in the Republic of Albania”.

In my reasoning, some of the recommendations deemed necessary to the efficient administration of excise duties relates to:

1. Issue guidelines in order to unify the practices associated with the excise law and regulations implementation, thus by increasing the customs administration performance.
2. Targeting controls via the use of more efficient methods on risk analysis.
3. Strengthening the capacity of customs administration through the addition of trainings organized by the Tax and Customs Administration Training Center.

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