

VAT And Export Of Services in Albania

By Mirjeta Emini of Boga & Associates

In the ambit of the Stabilization and Association Agreement entered into between Albania and EU, Albania has adopted certain amendments to its VAT legislation aiming to harmonize its internal legislation with that of the EU. Some newly adopted rules on VAT treatment of exports have been associated to the harmonization obligation. Though sub-legal acts have also been passed to implement the new law provisions, some ambiguities in their practical application still persist.

Until January 2010, the export of services under VAT legislation was considered as exempted supply with right of deduction (i.e. subject to a VAT at 0% with the right to deduct the input VAT related to such supplies). Under the previous article 31 of Law no. 7928, dated 27.04.1995 "On VAT", the VAT at the rate of 0% was applied on:

- a. supply of services conducted outside the territory of the Republic of Albania from a taxable person whose place of business or whose residence, in the case of individuals, is in Albania;
- b. supply of services related to the international transportation of passengers and goods; and
- c. supply of goods and services related to the commercial or industrial activity in the sea.

Starting from January 2010, with adoption of some amendments to the above provisions, the services under point (a) are considered as VAT exempted supply with no right of deduction. This means that no VAT should be applied from an Albanian supplier, but the input VAT related to purchases made by this supplier for such export supplies are no longer deductible. With the new change the taxpayer, having taxable and exempt supplies, should apply the partial VAT credit scheme.



Nonetheless, there are certain exceptions to the VAT non deductibility rule set forth in joint instruction issued by the Minister of Finance and the Minister of Public Works, Transport and Telecommunication (Instruction no.13, dated 18.09.2010). This instruction has determined the specific categories of supplies related to the international transport of goods and passengers considered as export and taxable at 0% rate. These categories include the international transport in the sea and the international air transport as well as the related services.

For the first time, through such instruction, telecommunication roaming services invoiced to non-resident operators are considered as export of services and consequently as zero rated supplies (and not as exempt supplies). In addition, the telecommunication services of interconnection offered to a foreign operator from the Albanian operators will be also considered as export of services, for VAT purposes. This specific wording served to put some clarity in the VAT treatment of telecommunication services, which until that moment were ambiguous.

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Nevertheless, the definition of "export of services", which has continuously been a challengeable issue between the taxpayers and the tax authorities in Albania, remains still an issue. Pursuant to the provision of the article 15/1 of the VAT Law, the place of supply of services is where the services are produced, unless otherwise provided under this law. Pursuant to article 15/4 of the VAT Law, in principle, services are considered to have been rendered at the place where the supplier is established. Albanian tax authorities link the determination of place of supply of services with the place of use/consumption of the services i.e. whether the services rendered to foreign entities are used by the latest abroad or in Albania. In other words, if the services are required and necessary for an activity of the foreign entity in Albania, the services may be considered as used/consumed in Albania and subject to VAT at 20% rate. Hence, the fact that the services were provided to a client outside Albania is not relevant for the tax authorities.

In the past, the question whether the services rendered within Albanian territory and consumed by a foreign entity would be considered as export of services were at the centre of debates and subject of different interpretations issued by the tax authorities. Unfortunately, the amendments of January 2011 have not put an end to such discussions and ambiguities. Again, the tax authorities tend to consider the place where the services are rendered as the basis for considering the services as taxable, without any written and clear guidelines being issued for avoiding different interpretations and their impact to the status of the taxpayers obligations.

Boga & Associates established in 1994, has emerged as one of the premiere law firms in Albania, earning a reputation for providing the highest quality of legal, tax and accounting services to its clients. Boga & Associates also operates in Kosovo (Pristina) offering full range of services. With its diverse capabilities and experience, the firm services leading clients in most major industries, banks and financial institutions, companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, entertainment and media, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods.

Ms. Mirjeta Emini is a member of the Approved Accountants Association in Albania. She is the Partner heading the tax and accounting department covering both jurisdictions Albania and Kosovo. She manages the accounting, bookkeeping, payroll, tax advices, tax audits and forensic assistance to local and foreign clients.

Ms Emini can be contacted on +355 4 225 1050 or at memini@bogalaw.com.

