

Forced Tax Collection: Bank Accounts` Blockage and Its Impact on Taxpayers` Fiscal Behaviour in Albania

Avenir Lleshanaku – PhD Candidate

Epoka University - Albania

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Abstract

One of the big reforms in Albania regarding Tax issues was the abrogation of Law no. 8560, of 22 December 22, 1999 "For Tax Procedure in the Republic of Albania" and the approval of new Law no. 9920, of May 19, 2008 with the same name and the Instruction no.24, date 02.09.2008 on "Tax Procedure in the Republic of Albania" which both have the purpose to reduce informal economy and to improve the business climate in the country. By way of providing details on some issues, we will focus on the part of how this law determines the procedure of constringent precautions for a forced tax collection and mainly that of taxpayers` bank accounts blockage. The paper aims to shed light on if this procedure of constringent precautions help the purpose of this Law to reduce informal economy and to improve the business climate in the country or not. As a methodology we are going to give the evaluation of Albanian application of the above mentioned Law and Instruction, being in in compliance with other parts of regulations and blocking orders themselves.

Keyword: tax procedures, bank accounts` blockage, constringent precautions

1. Introduction

Based on Law no. 9920, date 19.05.2008 "For Tax Procedure in the Republic of Albania", Tax authorities have the right to use constringent precautions for the collection of unpaid tax liabilities in case they are not paid in time. One of the precautions which is mostly used by tax authorities in Albania is blocking of tax payers` bank accounts and ordering the execution of blocked accounts by transferring the blocked amounts from the taxpayers` accounts to that of tax authorities.

As we will see below, law for tax procedures, the respective instruction and manuals of tax collection and tax liabilities management, all of them give clear explanations for the gradual procedures of unpaid tax collection, but Tax authorities overdo with their competences given from law and they become an obstacle for the business activity and give a negative impact on taxpayers` fiscal behaviour.

2. Theoretical Background of Related Albanian Legislation

Law for tax procedures, the respective instruction and manuals of tax collection and tax liabilities management, give clear explanations for the gradual procedures of unpaid tax collection. Before runing constringent precautions it is clarified the way how tax authorities will behave like:

- a) sending of remind letters
- b) contact by telephone
- c) direct contact of taxpayers from tax inspectors
- d) phiscal visits etc.

After consuming the application of the above manners, if tax liabilities of a taxpayer are still not paid in time, then Tax authorities have the right to apply constringent precautions among which is blocking of taxpayer`s bank accounts, actually the most used precaution by Tax authorities in Albania.

Article 90 of Law nr.9920 dt.19.05.2008 "For Tax Procedure in the Republic of Albania" obliges the procedure of taxpayer`s bank accounts blockage and Instruction no.24, date 02.09.2008 on "Tax Procedure in the Republic of Albania" aims to clarify the above Law. In the Instruction no. 24, among other it is clarified the application of Article 90, but there are some crucial points which make this article be not in compliance with other internal tax collection related procedures and bank accounts blocking orders themselves.

Coming up from the above noncompliance of Law and other regulations related to forced tax collection by blocking bank accounts, and the way how blocking orders over bank accounts are applied, has created many problems for the normal business activity of a company. The purpose of Instruction no. 24 is blocking and transferring only the amount of unpaid tax liability and not blocking of all bank accounts of taxpayers at all banks and transferring to Tax authorities

accounts greater amounts than tax liability.

Because of this situation it is caused that many companies keep in their bank accounts only minimum amounts of money, forcing so indirectly many financial transactions to be done outside bank accounts and raising the phenomenon of informality. Many companies liquidate each other in cash and make purchases in cash. This kind of informality causes also other problems related to fake financial statements. If such companies will ask from banks to finance their investments how will be possible from banks to make a real risk analyse of these kind of financial statements.

Because of the abovementioned noncompliances, in practice solutions are achieved only if the taxpayer or its representative follow manually the correspondence of papers and blocking orders sent to banks, by facing so extra administrative and financial costs, which in overall is not at all in compliance with an efficient service to taxpayers and bank customers.

From the feedback of bank customers it can be said that many companies are notified for their unpaid tax liability only by banks when the blocking order has arrived at the counters of the bank, which means that Tax inspectors don't contact the taxpayers at all and they apply a very short way for forced tax collection, that of blocking directly all bank accounts of tax payers.

3. Methodology – Evaluation for the Applicability of Related Albanian Legislation

As a methodology we are going to give the evaluation for applicability of the above mentioned Article 90 of Law nr.9920 dt.19.05.2008 "For Tax Procedure in the Republic of Albania", and Instruction no.24, date 02.09.2008 on "Tax Procedure in the Republic of Albania" in the same time being in incompliance with other parts of regulations and blocking orders themselves. As below we are clarifying the most important ones:

- a) At the above instruction it is mentioned that "...*This blocking order is sent to banks which tax administration is aware that the taxpayer, or administrators or owners of commercial society, have their accounts, as well as to all other banks headquartered in the Republic of Albania*". First of all, tax authorities are not aware regarding bank accounts of tax payers because they don't collaborate with banks for sharing information regarding the data of taxpayers even why tax authorities have the right to request from banks any information related to taxpayers according to Article 61 and 62 of Law nr.9920 dt.19.05.2008 "For Tax Procedure in the Republic of Albania". Secondly, as it can be seen, the aim of the above procedure is blocking and transferring only the amount of unpaid tax liability and not blocking of all bank accounts of taxpayers at all banks, by creating so problems for the normal business activity. The way how this procedure is applied in practice has created many problems which are related mainly with the lack of information and coordination between banks and Tax authorities. Tax authorities send these blocking orders to all banks and let us suppose that one blocking order for a taxpayer is sent to all banks on November 1st 2013. The unpaid tax liability will be executed from the account of taxpayer at Bank A which will transfer the respective amount to the Tax Office account within three working days from the date receiving that blocking order, on November 3. Meanwhile that blocking order has been sent to other banks also on November 1 and they have blocked the accounts while one of them could be that they have executed in the same time. How will be coordinated the unblocking of bank accounts? What about the reimbursement of amounts transferred more than the tax liability? If this problem is let to be chosen by the actual tax procedures it could take many time, maybe dozen of days, by creating so many difficulties for taxpayers (bank customers) and banks themselves. In practice fast solutions are achieved only if the taxpayer or its representative follow manually the correspondence of papers and that of blocking orders sent to banks, by facing so an extra administrative and financial burden, which in overall is not at all in compliance with an efficient service to taxpayers and customers.
- b) Article nr. 102 of the above mentioned Law "For Tax Procedure in the Republic of Albania" determines that "*Tax authorities stop immediately every constringent precaution when the taxpayer liquidates the unpaid tax liability*". How should be understood the term "immediately" in case when the execution order will be executed from more than one bank, so paying more then the tax liability? Is there any accurate procedure for issuing "immediately" of unblocking orders and their execution? Is there any accurate procedure for reimbursing the money executed more than one time? All these questions cannot be answered with the actual Law, Instruction no. 24 or other procedures. This kind of incompliance causes many debates among taxpayers, bankers and tax authorities because it is a crucial fact that bank accounts continue to be blocked dozen of days even after tax liabilities are fully paid.
- c) Another debating point is related te the following statement of the procedure: "*Bank makes the transfer of amount in favor of tax administration within 3 bank working days from the date of receipt of the Blocking Order*

from tax administration". Another internal regulation circulated to banks from Ministry of Finance is that no payment can be done in favor of Tax Authority's bank accounts without being associated from "Tax Electronic Forms" issued by the electronic system of Tax Administration, which means that no payment can be done within 3 bank working days because Tax Authorities should provide banks with these forms after they have been informed by banks related to the blocked amounts. What happens in practice is that Tax Administration never provides banks with such forms and all bank accounts of the taxpayer remain blocked regardless the blocked amounts, until a solution between tax authorities and tax payers which in most cases is by having a special agreement for paying tax liabilities with installments. But until having this special agreement, dozen of days have past and all bank accounts remain blocked. Why do tax inspectors choose such a way? Why don't they suggest to the taxpayer this special agreement before going to the step of bank accounts' blockage?

- d) While Instruction No. 24, dt. 02.09.2008 aims to clarify the application of Law 9920 dt.19.05.2008 "For Tax Procedure in the Republic of Albania", it is worth mentioning another noncompliance between Article 90 of this Law and Instruction Nr. 24 itself. Instruction nr. 24 stipulates that: *"In the case that on that dated the taxpayer's tax is still not paid, the Director of the Regional Directorate or the Chief of the local government is obliged to issue an order blocking to bank accounts and deposit accounts of taxpayers. This Blocking Order is sent to banks for which tax administration is aware that the taxpayer, or administrators or owners of commercial company, have their accounts, as well as to all other banks headquartered in the Republic of Albania."* The underlined part - *"or administrators or owners of commercial company"*- is in contrary with Article 90 of the law. If we look carefully at Article 90 - *"Blocking order of taxpayer's bank accounts"*, it is mentioned only blockage of taxpayer's account, so that of company, in case the taxpayer is a company. Article 90, neither at first paragraph nor at other paragraphs does not refer to the administrator or shareholders of the company and their individual bank accounts. In this understanding, Instruction no. 24 overdoes the competences given by Law because the Instruction has no right to change or interpret the Law. An instruction has the right and duty only to explain the law but not to change it. Law for procedures refers to liabilities of administrators and shareholders only in the case when the confiscation, bankrupt or liquidation procedures have finished. (Look at Article 99 - *"Responsibility of shareholder and administrator"*). These unkind events happen so often that many administrators are forced to think that they should not keep their savings in a bank but somewhere else.
- e) Another incompliance between Article 90 of Law no. 9920 and Instruction No. 24, maybe the hottest one, is related to the amount of money for which the account has to be blocked. Instruction no. 24 stipulates that: *"In case when the balance of taxpayers' account is less than unpaid tax liability amount, bank transfers to the Tax Administration account the whole amount and taxpayer's account remains blocked until it becomes possible the transfer of the entire amount required to the account of Tax Administration."* The underlined part is in contrary with Article 90, point 1, of the law. If we look carefully at Article 90, point 1, - *"Blocking order of taxpayer's bank accounts"*, it is mentioned that the amount required to be blocked by banks is the smaller between the amount that tax administration requires to obtain and the amount that results in the taxpayer's bank account at the time of issuing the blocking order. Article 90 of Law 9920, neither at first paragraph nor at other ones does not stipulate that the taxpayer's bank account will be blocked continually even if its balance is zero. In this understanding, Instruction no. 24 overdoes the competences given by Law because the Instruction has no right to change or interpret wrongly the Law. An instruction has the right and duty only to explain the law but not to change it. The representatives of many companies are afraid of this kind of behaviour from tax inspectors and they oftenly ask their bankers about the situation of their bank accounts. Any time before ordering a transaction or depositing some money in their accounts they ask to the banker the question: Are my accounts blocked or not?

4. Conclusion

Application of the abovementioned instructions and procedures related to forced tax collection by blocking bank accounts has shown that there is an urgent need for amendment, especially for Instruction no. 24. Amendments for sure have to be discussed first among Tax authorities, representative of taxpayers and banks also.

As Tax Authority has the right to request from banks data of taxpayers, means that there is a lot space for collaboration between banks and tax administration so that the whole operational procedure of accounts' blockage orders to be more effective. We can mention here about practices of other countries where tax authorities send blocking orders only to one bank where the taxpayer holds its most active bank accounts.

Tax authorities should give many alternatives to taxpayers and banks to communicate between each-other. They

should allow to each other to exchange information electronically except the official paper correspondence.

The above raised questions tell us that the applied procedure of bank accounts blockage urges the behavior of taxpayers in a negative way effecting so inappropriately to the general picture of tax payment culture. That is why tax authorities have to consider other better ways for the forced tax procedures and keep the step of bank accounts blockage as one of the last precautions which tax inspectors have to apply.

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