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POLICY POSITION PAPER

Money Laundering in the Context of Fiscal and Criminal Amnesty

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The document was drafted by AIS, within the C1-EU-NPA project framework



The Policy Document entitled "Money Laundering in the Context of the Fiscal and Criminal Amnesty" was drafted by the organization Albanian Institute of Science AIS / Open Data Albania, in implementation of the C1 - EU - NPA project "*Improving the Debate on Policies and Accountability for Fulfilled Basic Rights*", through the creation of the Negotiation Platform of Cluster1 Albania. This Document aims to present an analysis of the main aspects related to the recent legal initiative concerning the Fiscal and Criminal Amnesty of Entities that Submit a Voluntary Declaration of Assets, presented as a draft law for public consultation on June 23, 2022.

The C1 – EU – NPA project is implemented by four Albanian organizations: Center for the Study of Democracy and Governance CSDG, Institute of Political Studies ISP, Albanian Committee of Helsinki KSHH and Albanian Institute of Science AIS, with the support of the Embassy of the Kingdom of the Netherlands in Tirana.

The document is presented as part of civil society initiatives, which aim to contribute to the country's European integration.

The Findings, Opinions or Recommendations expressed in this Document represent the approach of experts and AIS and do not necessarily reflect those of our partners or supporters of the C1-EU-NPA Project.



Methodology

The methodology of the document is focused on an analysis of the current situation, based on potential factors that might influence the successful implementation of the fiscal amnesty such as: (i) fiscal policy and administration, (ii) the degree of informality, (iii) the fight against corruption and (iv) risk of money laundering and terrorist financing. The document also addresses the main risks of implementing the draft law submitted for public consultation, as well as its expected impact. The document has reflected the position of international financial institutions, as well as partners. And lastly, it lays out recommendations for alternative solutions or possible amendments that are deemed necessary to be reflected in the final draft of the law.

Fiscal Amnesty in Albania

After 2010, two fiscal amnesties were undertaken, namely, in 2011 and 2017. The 2011 Law on Fiscal Amnesty provided for the partial abolition of tax and customs debts, as well as the mandatory social security and health contributions, establishing in advance principles, guarantees and actions of entities subject to said amnesty. The second amnesty was implemented in 2017 and included individuals, businesses, legal entities, companies, subject to partial or complete abolition of tax and customs arrears, as well as the procedure for removal of vehicles from circulation after such abolition. Subjects, who were convicted by way of a final court decision for criminal offenses in the tax and customs sector did not benefit.

In fact, the second tax amnesty law, although more extensive, was a continuation of the previous government legislation, which failed to improve the indicators of informality and tax evasion. Both amnesties displayed problems related to the insufficient time space dedicated to consultations with all stakeholders, as well as a lacking information and awareness campaign, the shortcomings of the adopted legislation, the moral hazard of the amnesty; hence, its implementation remained deficient.

Purpose of the proposed piece of legislation

Fiscal amnesty should mean amnesty of undeclared profits, in the sense of undeclared income in the tax administration, but not of profits deriving from criminal activities, such as planting and trafficking of cannabis, trafficking of other drugs, prostitution, corruption, etc. The draft law creates the premises for a fiscal and criminal amnesty with a 1-year term, for subjects who, under the conditions and procedures provided for in it and in the by-laws, voluntarily declare assets, aiming the legalization and formalization of activities carried out during the last 30 years.

The draft law intends to: (i) guarantee transparent procedures to enable the legalization of undeclared and/or unregistered assets, in whole or in part, as well as reassess the financial statements of entities,



(ii) provide procedures for the declaration and payment of compulsory income and assets tax arrears, (iii) determine tax rates to be applied and the deadline for the declaration, (iv) preserve secrecy and information related to these assets, (v) halt the initiation of administrative procedures and criminal proceedings against these subjects by the relevant institutions, in relation to these assets.

The current situation in which the amnesty bill is being prepared

The up-until-now illegality of the assets' declaration, under the current circumstances in our country, has been influenced by a number of factors, such as: the lack of trust in public institutions, including the tax administration, which are often considered inefficient and corrupt; restrictions on doing business; proprietary rights that cannot be guaranteed; lack of functionality of the judicial system in the country; serious problems with properties, especially regarding their legal safeguards; inadequate strengthening of the legislative and regulatory framework; high fiscal burden combined with high administrative costs, insufficient provision of public services and infrastructure; the low rate of detection by the administration of tax evasion. But, among the essential factors on which the success of the implementation of the fiscal and criminal amnesty will depend will be the analysis of the current fiscal system, the analysis of the level of informality, the analysis of the level of corruption, as well as the measures in place on fighting money laundering.

The current fiscal system

The current tax system is complex and fragmented and frequent *ad hoc* changes have damaged the stability, transparency of the system and further narrowed the tax base. Exemptions and preferential treatment for select taxpayer groups and sectors have been injected, in response to lobbying pressures. The poor performance in revenue realization comes as a result of the narrowed tax base, difficulties in administration and inefficient tax collection.

Personal income tax with multiple thresholds fragments the income tax base. The current system provides incentives and opportunities for taxpayers to minimize or avoid paying, allowing individuals to reduce their tax liability or avoid it, by changing their mode of engagement, e.g. as a business or self-employed worker¹. The tax system is not neutral between various forms of business activities. Many individuals underreport their income. Informality may have also been encouraged by the administrative burden, which remains high for small business. In relation to indirect taxation, a very wide range of goods, services and taxpayers are exempted from, such as VAT and excise or are treated with reduced rates, undermining the efficiency of tax collection. The VAT system, along with income taxes and other taxes, provides many benefits to certain groups of taxpayers that undermine the efficiency and integrity of the tax system.

The fiscal system is not inclusive and fair to all groups of taxpayers and fails to ensure that all taxpayers pay a fair tax burden, based on their ability to pay. Many taxpayers, who commit tax evasion or

¹ The government has undertaken an initiative to strengthen the income tax law, which aims to simplify, increase efficiency and greater equality between tax payers who earn different types of income, but which has yet to be approved.



avoidance, think that the fiscal system allows unequal tax treatment, tax burden and high administrative costs, as well as arbitrary actions of tax authorities. Often times, evasion is imposed on the business due to the situation of informality or legislation².

The current fiscal system has created distortions and incentives for both tax aversion and evasion, creating favorable conditions for an informal culture and unregulated and uncontrolled market competition.

The high degree of informality as wide acceptance of the system

In the last 30 years, in the Albanian economy, the high degree of informality has damaged the development of a competitive economy with clear rules. The informal economy means deliberate violation of laws, accompanied by fiscal avoidance and evasion. Informality has affected the tax base and revenue mobilization. Informality in Albania appears in various forms and in almost all economic activities. A factor that encourages informality is the perception of the lack of fairness in the tax system, the high fiscal burden and administrative costs. One of its main forms, with a negative effect on the performance of payroll tax revenue collection, remains informality in the labor market. Revenues from labor taxation are much lower compared to countries in the region.

All international reports, and in particular reports from the World Bank, point that the level of informality, as a percentage of informal employees against the total number of employees, remains the highest in the region. Another indicator of informality is the number of social security contributors in comparison to the total number of employees, as deduced from the ISSH and INSTAT reports. The number of employees who do not contribute to the social and health contribution scheme is not only high, at over 38% of the total number of employees in 2020, but has worsened in 2020, compared to 2019 and 2018³.

Meanwhile, according to reports from international institutions, the tax administration has limited capacity and cannot create a complete picture of individual taxpayers, because: first, not all taxpayers are required to submit a tax return, and second, the tax administration is not able to collect data from third parties like banks, property registries, etc. to cross check and verify information.

Assessment from organizations monitoring the level of corruption

According to the corruption perception index published in 2022 by International Transparency, Albania is ranked 110 out of 180 countries in total, ranking as one of the countries with the highest level of corruption. Albania has a marked difference with the countries of the region compared to Croatia in 63rd place, Montenegro in 64th place, Kosovo and North Macedonia in 87th place and Serbia in 90th place. The corruption perception index is worsened over the years. Compared to its position in 2016, Albania in 2021 has deteriorated by 27 places. Transparency International's index this year saw judicial reform as a start in the fight against corruption, but experts say delays in setting up key structures such as the Special

² In many cases, small businesses refuse to buy goods via invoice, forcing the big businesses to commit fraud.



Anti-Corruption Prosecutor's Office and the National Bureau of Investigation contributed to the poor rating.

Assessments of bodies monitoring financial control issues, money laundering and financing of terrorism

International reports highlight the importance of taking decisive action against money laundering at all stages, starting from proactive investigations, prosecution and final convictions for high-level corruption and confiscation of criminal assets. Moneyval's July 2018 report emphasized that although Albania has made progress, risks remain high. According to the national risk assessment, the main threat is criminal income derived from drug trafficking, crimes and tax and custom fees evasion, as well as corruption.

According to Moneyval's report, the number of corruption investigations may be increasing, but the number of final convictions remains low at all levels. Corruption in the judiciary negatively affects the normal functioning of the justice system, undermining public confidence in the rule of law and the impunity of criminals. Also, organized crime groups with individuals of Albanian ethnicity are active in many European countries, with links to other source, transit and destination countries. They mainly focus on drug trafficking, human trafficking and property crimes. The crime proceeds circulate and are invested in several forms in Albania, e.g. through investments in real estate and commercial companies.

In the 2021 report, the Basel Institute on Governance assesses a new risk of money laundering: that of using virtual assets such as crypto currencies for both legitimate and illegitimate purposes. Their borderless nature and existence outside the formal financial system makes these transactions a tempting opportunity for criminals to hide the proceeds of corruption and other crimes, tax evasion or terrorism financing. According to the index that measures the risk of money laundering and terrorist financing in jurisdictions around the world, Albania is ranked among the firsts, respectively in place 39 out of 110, being considered a country with considerable risk.

In the US State Department's March 2022 Money Laundering Report, the International Bureau of Narcotics and Law Enforcement Affairs highlights that, while the Government of Albania has made progress in preventing money laundering in 2021, much more needs to be done. Albania remains vulnerable to money laundering due to corruption, the presence of organized crime networks and gaps in legislation and oversight. Albania has a large cash economy and an informal sector, also significant inflows of money and investments from abroad. Narcotics trafficking and other organized crime activities are the main sources for laundered funds.

Whereas, in the April 2022 report, MONEYVAL underlines that Albania has not made significant improvements in measures to combat money laundering and terrorist financing in accordance with FATF recommendations. Among other issues, the report examined the implementation of new international requirements for virtual assets, including crypto currencies, and providers of these assets.

In June 2022, FATF underlines that, since February 2020, when Albania made a high-level political commitment to work with FATF and MONEYVAL to strengthen the effectiveness of its anti-money laundering and anti- terrorism money laundering regime, it has taken steps towards improvement. However, the country must continue to work to address its strategic shortcomings including: (i) providing an appropriate legal framework for violations, from companies and NGOs failing to register as obligatory, as well as the implementation of proportionate and convincing sanctions; and (ii) increasing the number



of money laundering prosecutions, especially in cases involving foreign crimes. The FATF places Albania on the list of countries under increased surveillance for the risk of money laundering and requests that it continue to implement its action plan to address the aforementioned strategic deficiencies as soon as possible, after all deadlines have expired.

On June 8, 2022, MONEYVAL estimates that Albania has achieved full compliance with seven of the 40 FATF recommendations that constitute the international standard for the fight against money laundering and terrorist financing, but there are still deficiencies in the implementation of 29 recommendations where found "largely compliant". The country remains "partially compliant" with the four recommendations. Albania will again remain under MONEYVAL's enhanced monitoring and is expected to report on progress to strengthen the implementation of measures to combat money laundering and terrorist financing within two years.

Impact and outcomes from the application of the law

Fiscal amnesties have aimed at: (i) the formalization of the informal economy, (ii) the increase in revenue, by way of voluntary declarations, (iii) the expansion of the tax base, as well as (iv) the beginning of a stricter law enforcement regime, (v) the repatriation of funds from abroad, mainly by migrants, which enables additional liquidity to enter within the financial system and the economy, (vi) the formal recognition and guarantee of property rights and increase in the fund of immovable assets.

Positive impact and outcomes from fiscal amnesty

The positive effects of the tax and penal amnesty should be considered with caution in our country's circumstances, because both the previous experience and the current situation do not constitute a guarantee for the formalization of the economy, the increase in revenues, or the strengthening of fiscal discipline.

The increase with additional revenue of the state budget, as well as better performance in the tax revenue in the future, should be taken with caution because:

- **"Moral hazard"** may have a negative impact on revenue growth because: (i) regular taxpayers may see the fiscal amnesty as a favor to tax offenders, thus risking that they too will try to avoid paying fiscal obligations in full compliance with the regulatory framework in force, (ii) the announcement of the amnesty and its size may show taxpayers how weak the tax administration has been in achieving legal enforcement in the fiscal field, and that their fear on carrying out fiscal evasion is not justified, (iii) in the hope that other amnesties will follow, people will continue with tax evasion thinking that they will be amnestied in the future,
- The difficulty of migrant funds repatriation exacerbated by their skepticism about a number of factors, such as political and economic developments in the country, arbitrary and bureaucratic actions of public institutions, the security of repatriated funds, the guarantee of maintaining the secrecy of information and confidentiality, etc.



Incentivizing voluntary declaration, increasing, thus, the number of taxpayers encouraged to come forward by the proposed amnesty, should be taken with a grain of salt for, in addition to the "**moral hazard**", other risks may be:

- Incertitude regarding guarantees to preserve the secrecy and details related to these assets
- Incertitude regarding guarantees that administrative and penal proceedings won't follow the asset declaration
- Incertitude regarding potential future legislation revisions and arbitrary actions
- The draft law does not have a provision regarding other tax obligations that may arise as a result of self-declaration or re-declaration of assets, and therefore may generate additional costs.

The benefit that the tax amnesty provides for a new tax system, with the establishment and enforcement of a more rigorous fiscal discipline, increased disclosure, cost reduction and **increased performance**, should be again taken with reservation because:

- The government should first present a report assessing to what extent revenue collection performance is due to ineffective administration or non-inclusive and fair tax policy;
- The amnesty was brought up at a time when Albania has not completed the reform to improve the quality and efficiency of the fiscal system, which would help its missing credibility;
- The Albanian administration is limited in its capacities and the necessary infrastructure to undertake the implementation of this comprehensive law;
- If the main objectives of the fiscal amnesty are not met, it will encourage expectations for other amnesties in the future, jeopardizing the regular payment of fiscal obligations.

Negative impact and outcomes from fiscal amnesty

The law has no potential positive impact on the business climate. Fiscal amnesties have resulted in a violation of fiscal fairness for regular taxpayers, in comparison to those who have violated the law and committed tax evasion or criminal activities. The negative impact of the amnesty comes from the fact that the government carries out the tax amnesty at the cost of honest taxpayers, formalizing income in violation of fiscal laws as well as those of criminal origin.

a. Possible deterioration of the business climate in the country will be reflected as:

- While the amnestied entity that has been informal pays only a special tax at a reduced rate and is also allowed to invest in state securities, the formal entities which may have arrears or are under criminal proceeding for tax or customs evasion⁴ do not benefit from the amnesty;

⁴ Article 116 provides that tax evasion is considered: (i) hiding or avoiding payment of tax obligations through non-submission of documents or non-declaration of necessary data, (ii) submission of forged documents or statements or false information that lead to the calculation incorrect amount of the tax, tax or contribution, (iii) concealment of income, with the aim of concealing or avoiding payment of tax obligations, the taxpayer, (iv) non-declaration of employees and concealment of salary if from verification and control at the location of the business result is that the



- The amnestied entities will be exempted from the obligation to provide information, will be exempted from investigative and criminal prosecution, while for regular entities that have any tax violations, they will not benefit from the amnesty, and will continue to be in a process investigation, under penalties or sequestration of asset;
- The disparity between amnestied persons, who will pay their arrears a reduced rate, and regular taxpayer's tax rate.

b. Undermining of fair competition, as long as:

- Fiscal amnesty will be considered a normal practice, applied from time to time by governments, discouraging, thus, the respect for justice, encouraging fiscal evasion and promoting unfair competition
- Businesses will be on their right to express their concerns about unfair competition, from those who have so far kept their assets outside the system
- The formalized entities are treated differently, compared to the informal ones because in the event that a regular taxpayer fails to pay the tax liability on time⁵, the tax administration can collect the tax liability through the confiscation of the property⁶, while informal taxpayers, who violated the law, are given the opportunity to formalize their assets without any penalty
- No guarantees are offered so that after the fiscal amnesty, the so-called "year zero", the system will ensure the proper implementation of fiscal legislation, putting a stop to fiscal evasion practices.

c. Money laundering and criminal assets remain an elevated risk, because:

- Repatriation of illegally sourced assets from abroad will increase the potential risks of money laundering and terrorist financing
- The passing of the bill poses a compounded risk, as long as it involves fiscal and criminal amnesty
- As long as entities are exempted from the obligation to provide information to the relevant authorities regarding the time, manner of creation, holding or possession of declared assets, in

taxpayer has not declared to the tax authority any newly employed person, at least one calendar day before the start of work, (v) taxpayers who store, use or transport goods not accompanied by tax documents, (vi) person, who carries out unregistered commercial economic activity, (vii) registered taxpayers with tax liability simplified on profit for small business, which are not registered for VAT, etc.

⁵ Law no. 9920 "On tax procedures in the Republic of Albania", defines that a tax liability includes an unpaid tax, late interest or fines. Meanwhile, the fines include fines for administrative penalties, for not paying the tax liability on time, for not declaring on time, for not notifying the change of ownership, for the transfer of the price.

⁶ Article 93 of the law no. 9920 "On tax procedures in the Republic of Albania": If the taxpayer does not pay the tax liability on the specified date, in accordance with Article 89 of the law, for the notification and request of payment, the tax administration may collect the unpaid tax liability through sequestration, followed by the confiscation of the property secured in favour of the tax administration, owned by the taxpayer.



accordance with the provisions of this law, it is difficult, if not impossible, to guarantee if they do not derive from the activity criminal

- The draft law does not provide mechanisms on how the administration and financial institutions will take steps to control the newly declared assets, which should be in line with measures to combat money laundering and terrorist financing
- The draft law encourages subjects to declare assets in values significantly higher than the value of a transaction provided for in the money laundering law, for which verification and investigation by the relevant institutions is required⁷
- Public administration institutions are fragile, including the unit for self-declaration, making them unfit to cope with the verification flow of voluntary declarations;
- The five-day deadline for the verification and assessment whether the subject is fit to benefit from the legal concession is insufficient and such haste is not accounted for in the draft law;
- The draft proposal does not provide for inhibitory mechanisms aimed at eliminating the real risk of money laundering.

d. The risk of criminal amnesty lies in the fact that the draft law foresees that all assets, money, valuables, etc. are legitimized, amnesty and criminal prosecution is excluded regardless of whether these assets were obtained as a result of criminal actions. The only exceptions are the criminal offenses covered by the law on criminal organizations and those by the normative act on OFL, leaving the spectrum of criminal offenses very wide, well beyond the fiscal offenses related to the non-declaration of income. This increases the risk for money laundering and terrorist financing.

e. The risk of reliable financial statements lies in the fact that the draft law allows for the cleaning of financial statements based on a self-assessment carried out by the benefitting entities, which offers the tax administration no guarantee that it will be done correctly. At the same time, due to the lack of guarantees, the legal auditors or accountants themselves may refuse to issue an audit opinion on the financial statements of the entity, applying to be subject to this law.

f. The risk that high political and public officials will benefit from the amnesty, for assets created illegally, because according to the provisions of the law, subjects who had the legal obligation to declare assets, pursuant to Law no. 9049, dated 10.4.2003, "On the declaration and control of the assets, on the financial obligations of elected officials and some public servants", amended, as well as the individuals included in their family certificate, but who are not in office as of 01.01.2022, are beneficiaries of this law. Whereas, based on the provision of Law no. 9049, this category is considered "politically exposed persons" up to 3 years after leaving office.

g. The risk of harming the cooperation with partner countries, because the draft law goes against the spirit and provisions of the conventions and the general principle of reciprocity and agreements for the fight against money laundering and terrorist financing. The application of this law on Albanian citizens

⁷ The draft law on the amnesty foresees that assets declared should not exceed the 2 million Euros value, while the law on money laundering and financing of terrorism requires a full control and investigation by the relevant authorities for transactions as much as 1 million Lek.



who are not tax residents in Albania and are enabled to repatriate informal assets, the source of which are the partner countries, will conflict with the agreements on Double Taxation and the Prevention of Fiscal Evasion in Connection with the Tax on income.

Potential juxtaposition between the amnesty law with current domestic laws, international agreements and government commitments to international organizations

1. Compliance with the national legal framework

It is unclear how Law no. 9917 "On the prevention of money laundering and financing of terrorism", will be applied in the context of this amnesty, because the essence of the law is the identification of any suspicious transaction for money laundering and financing of terrorism and for values many times smaller than the limit of 2 Million Euros this draft law sets. Identification is made difficult due to the fact that: (i) entities do not have an obligation to declare the source of income, (ii) and the moment the beneficiary entity is provided with a certificate for the completion of the declaration process, it is exempted from the obligation to provide information, from investigative proceedings, from criminal prosecution and protected from sequestration measures.

It is unclear how Law no. 9049, dated 10.4.2003 "On the declaration and control of assets, on the financial obligations of elected officials and some public servants", will be applied in the context of this amnesty, because subjects to this law will also be beneficiaries of amnesty if they are not in office as of 01.01.2022, when in the meantime, based on Law no. 9049, this category is considered "politically exposed " up to 3 years after leaving office.

It is unclear how Law no. 9920 "On tax procedures in the Republic of Albania", will be applied in the context of the amnesty, because the essence of Law no. 9920 is, (i) the fact that if a taxpayer does not settle the tax liability (tax, late interest or fine) there is a risk of his property being seized and then confiscated, while the subject who is amnestied not only benefits with impunity, exempt from investigative or criminal prosecution, but is also allowed to invest in state securities (ii) if the subject who hides or evades the payment of tax obligations, or other violations such as non-declaration or concealment of salary, etc. has committed tax evasion and is punished with a fine, the entity that has committed evasion is not liable to penalties, due to the amnesty.

2. Compliance with international agreements

It is unclear how the Conventions for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion in Connection with Taxes on Income will be applied in the case of the amnesty, because the entity repatriating its assets, whose source is in a foreign country, will be amnestied in Albania. The law amnesties an entity that has committed evasion in a foreign country with which Albania has an agreement for the prevention of fiscal evasion.

It is unclear how Law no. 93: "On the Multilateral Convention on the Implementation of Measures Relating to Tax Agreements for the Prevention of Base Erosion and Profit Shifting (BEPS)", will be



applied in the case of amnesty, for on the one hand Albania needs to act in accordance with the agreement concerning entities that carry out evasion of the tax base and on the other hand, the amnesty allows for the transfer of illicit profits, to the detriment of the country of income origin.

Position of international institutions monitoring economic and fiscal reforms, anti-money laundering measures

The draft law on fiscal amnesty was initially prepared in 2020, but it remained long unapproved. In advance, the International Monetary Fund, in a report published in July 2020⁸, underlines that the draft law is not supported by the Department of Fiscal Affairs of the IMF and the European Union, as it did not comply with international good practice for similar schemes of voluntary declaration.

Also, that same year, the EU Commission warned the Albanian government about some issues that may arise following the ratification of the law on fiscal amnesty, recommending that it be reconsidered before it is approved by the Assembly, or address some of the issues, regarding its scope and the money laundering risk, if they decide to move forward with it. In its position, the European Delegation raised concerns that the scope of this fiscal and criminal amnesty would go beyond that of similar legislation implemented in other countries and advised a revision, in order to target only fiscal evasion carried out by individuals residing in Albania, who have not partially or fully declared their income/transactions related to their assets.

The delegation, in its assessment, highlighted that it remains unclear for the banks and Moneyval, how the Law Against Money Laundering will be implemented in the frame of the amnesty, and that Law no. 9917 "On the fight against money laundering and the financing of terrorism" should be included in the crop of legislation, whose subjects are exempted from the application of amnesty. Also, Albania must ensure that it acts in accordance with international BEPS1 agreements, anti-money laundering legislation and Moneyval's recommendations. Subsequently, the last IMF mission in May 2022 reiterated the advice against a possible fiscal amnesty, given concerns about its impact on tax performance, as well as the risks associated with money laundering and tax administration⁹.

At the recent 13th meeting of the Subcommittee on Trade, Industry, Customs and Taxes, between the EU and Albania, serious concerns were raised about the current state of the draft law on fiscal and penal amnesty. European Commission deemed that the law would weaken Albania's anti-money laundering controls, even more so because non-tax residents, including Albanians living in the EU or the Western Balkans, fall under its scope and are required to relocate their income in the country in order to benefit from the amnesty. The current draft law raises serious concerns for EU Member States and other partners, posing a substantial reputational risk for the country.

⁸IMF Country Report No. 22/124 ALBANIA TECHNICAL ASSISTANCE REPORT—ENHANCING TAX ADMINISTRATION CAPACITY DURING CHALLENGING TIMES

⁹ Press release on May 19, 2022



Better alternatives in the short term

The initiative for a fiscal and criminal amnesty should be undertaken when it has been assessed that the state is able to establish control over fiscal evasion and avoidance, informality, corruption and the fight against money laundering and terrorist financing to an extent that is deemed acceptable. A possible alternative to the present draft would be to approve the law with amendments, such as:

- The scope of the amnesty to be only the fiscal amnesty for residents living in Albania
- The amnesty to also include abolishing or cancellation of obligations for regular taxpayers
- There is a critical need to settle bad debt, when it is uneconomical to pursue or cannot be legally recovered. The best international practices call for debt cancellation to be the final action, after all reasonable steps taken to collect the debt, have been exhausted. According to an IMF report¹⁰, a significant part of the tax debt stock in Albania is uncollectible
- In order to be credible and not to risk losing the trust and compliance of taxpayers, the fiscal amnesty law should be elaborated to increase the enforcement of obligations against taxpayers who do not comply with the law
- A political consensus is necessary for the adoption of the law in order to guarantee its stability during the implementation phase
- The law on the fiscal amnesty must have the approval of the partners, and in particular the European Union and the International Monetary Fund, as well as it should be able to honor international agreements.

Potential alternative in the long term

Another, more long-term, alternative, that could include fiscal and penal amnesty would depend on the progress of fiscal administration and fiscal policy reforms, resulting in the reduction of informality, corruption and new measures to prevent money laundering and terrorist financing. In long term, we deem that it would be necessary:

- In the circumstances of high informality, the tax system be based on a relatively small number of taxes with a single or very small tax rate on a broad basis. This would facilitate assessment and administration.
- Albania to complete the reform in line with the Medium-Term Revenue Strategy to improve the quality and efficiency of the fiscal system, to build a comprehensive and neutral fiscal policy, as well as a professional fiscal administration, which would serve to prevent laundering money and corruption.
- The implementation of reforms should have to mark significant progress in reducing informality, corruption, and preventing money laundering and terrorist financing.

¹⁰ There are about 96,546 non-active tax payers that represent about 68 percent of tax liabilities. Also, 70 percent of the total inventory of arrears is older than two years. The Law on Tax Procedures provides the authority to settle uncollectible tax debt after appropriate enforcement measures have been taken. To date, no debt has been discharged using this provision.



Recommendations for the consultation phase

- Before the implementation of the amnesty, it is important to conduct a preliminary assessment of the state of the fiscal system, to track its shortcomings and the need of the tax administration responsible for its implementation, to be properly trained
- The law should provide a time span, necessary to inform and sensitize all subjects involved in this process
- The draft law must be accompanied by an assessment of the potential risks and benefits impacting the economy
- The draft law must be accompanied by a report assessing the risk of money laundering and financing of terrorism and the potential for disparate treatment of different tax subjects.
- Beneficiaries of this amnesty law should be all subjects for whom criminal proceedings have been initiated for tax and customs evasion as well
- The law will have to take into consideration Albania's obligations towards foreign partners, deriving from tax agreements, which foresee information exchange and prevention of fiscal evasion;
- The law must reflect and include the recommendations of international partners, such as the International Monetary Fund and the European Commission, who have clearly and specifically expressed concerns regarding the risks its present form presents, especially the legal pockets allowing for fiscal evasion, corruption or money laundering;
- The Fiscal Amnesty Law should have been preceded or accompanied by the creation of legal schemes, which guarantee the protection of the success achieved so far in the fight against corruption, fiscal evasion and money laundering, as well guaranteeing that further measures to be taken, as proposed by MONEYVAL are not compromised.
- Due to the very importance of the fiscal amnesty, the time it will require and in order to guarantee the sustainability in its implementation, the Responsible Unit will have to be subordinated to the Council of Ministers.



CONCLUSIONS

The draft law on fiscal and criminal amnesty, in the present form submitted for public consultation, should not pass for approval, as long as the government is not able to establish control over informality, corruption and measures against money laundering and terrorist financing. The amnesty does not guarantee equal treatment of taxpayers and harms the business climate. On the contrary, the law favors subjects exposed to crime and subjects with political exposure. The application of an amnesty will have to respect the protection of the highest public interest; legal safeguards, and the equality of the parties before the law. According to Article 18 of the Constitution, everyone is equal before the law and differential treatment can only be based on legitimate and objective reasons, while such an initiative will create a disparate fiscal and criminal treatment.

The implementation of the law in the form presented for a fiscal and criminal amnesty carries a high risk of laundering money obtained through criminal and corrupt means. The draft law does not provide for control mechanisms to obtain follow-up information or investigation of the voluntary statements. The law allows for the amnesty of criminal money, the repatriation of money that is undeclared in the country of origin, and that of money obtained corruptly by officials or their family members. Another high risk remains the perception that criminal activities will be amnestied, resulting in the promotion of the informal economy and crime. The law does not provide the necessary guarantees that, after the year "zero" the legal and regulatory framework will be strengthened to prevent tax avoidance and evasion, the formalization of the economy, or those future violations will be severely punished.

The amnesty law, as it is being discussed and proposed, carries many risks, not only in the deformation of some principles protected by the Constitution, but also risks related to the financial system of the country, the fight against money laundering, Albania's assessment by international organizations of which she's is a part of, up to the violation of elements related to national security. Albania has the obligation to fulfill the recommendations of the FATF and MONEYVAL, in the framework of the fight against money laundering and the financing of terrorism, so this draft law does not go towards their fulfillment. The current draft of the law raises serious concerns for EU member states and will damage the reputation, as well as cooperation with partner countries.

The draft law on fiscal amnesty should be amended by designating as its beneficiaries all declaring entities resident in Albania, including those having tax arrears, to guarantee that the amnesty will not be extended to income obtained through corruption by officials and politicians, as well as their family members; the amnesty's field of action should be limited in the fiscal area and it should contain mechanisms guaranteeing that the declarations will be screened, in accordance with the law on the fight against money laundering and the financing of terrorism.



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