

INSTRUCTION NO.16, 16.2. 2009
ON THE PREVENTION OF MONEY LAUNDERING AND FIGHT AGAINST THE
FINANCING OF TERRORISM FROM THE TAX AUTHORITIES

Pursuant to articles 102/4 and 118 of the Constitution as well as article 28/3, letter 'c', of the Law no. 9917, of May 19th, 2008 "On the prevention of money laundering and terrorism financing" the Minister of Finance

INSTRUCTS:

Article 1
Purpose

The goal of this instruction is to regulate in details the reporting methods and procedures for the tax authorities as well as the exchange of information among the General Directorate of Taxation and the General Directorate for the Prevention of Money Laundering, in its capacity of the "Competent Authority"

Article 2
Definitions

Terms used hereunder in this instruction will mean the following:

1. Money Laundering – circulation and recycling of monies, derived from penal offenses as well as the conversion, transmission, transformation and transposition of the proceeds and property derived from criminal offences aiming at concealing their illegal origin, according to the definition of Article 287, of the Penal Code of the Republic of Albania.

2. Financing of Terrorism – has the same meaning as provided in articles 230/a to 230/d of the Penal Code.

3. Suspicious Transactions – any transaction (regardless of the amount), that due to its nature or character is unusual for the persons activity, or for some other reason raises suspicion for money laundering or financing of terrorism.

4. Taxpayer – means pursuant to this instruction, the "Customer" of the General Directorate of the Taxation. He is a natural person (business person or not), legal person or the legal person, residing or not in Albania, foreigner or albanian, private or public, that is obliged to pay taxes, to keep or provide information to the General Directorate of the Taxation.

5. Suspicious Activity Report (SAR) – is the form included in Annex II that is filled out for every suspicion, according to the guidelines attached in the annex, integral part of this instruction. SAR is sent to the competent authority. Suspicious activity indicators relevant to tax authorities are included in the annex I, attached and part of this instruction.

5. Competent Authority – according to the definition provided in law no. 9917, of May 19th, 2008, is the General Directorate for the Prevention of Money Laundering, that reports directly to the Minister of Finance and serves as the Financial Intelligence Unit in Albania.

6. Cash – for purposes of this instruction include paper money or coins, national and foreign in circulation.

7. Illegal Income - are "Proceeds of penal offenses" according to the definition of Article 36 paragraph 1, letter 'b' of the Penal Code.

Article 3
"Taxpayers" identification

1. General Directorate of Taxation will maintain the following taxpayer information:
a) for individuals: name, father's name, last name, date of birth, place of birth, place of permanent residence and of temporary residence, type and number of identification document, as well as the issuing authority and all changes made at the moment of execution of the financial transaction;

b) for individuals, which carry out for-profit activity: name, last name, number and date of registration with the National Registration Center, Taxpayer Identification Number (TIN), address and all changes made in the moment of execution of the tax transaction;

c) for private legal entities, which carry out for-profit activity: name, date of registration with the National Registration Center, Taxpayer Identification Number (TIN), address and all changes made in the moment of execution of the tax transaction;

ç) for private legal entities, which do not carry out for-profit activity: name, number and date of court decision related to registration as legal person, statute and the deed of incorporation, number and date of the issuance of the license by tax authorities, permanent location, and the type of activity;

d) for legal representatives of a client: name, last name, date of birth, place of birth, permanent and temporary residence, type and number of identification document, as well as the issuing authority and copy of the affidavit.

e) for VAT entities, in accordance with the law no. 9920, date 19.05.2008 “On tax procedures in the Republic of Albania”, and data related to commercial register provided by the National Registration Center.

2. Tax authorities when gathering data from the client, accept according to the stipulations of this instruction only original documents or notarised copies. Pursuant to this instruction tax authorities will maintain in customer’s file copies of the valid documents in the above mentioned form sealed with agency’s seal.

3. Tax agencies when they deem necessary should require the client to provide additional identification documents to verify the data supplied previously by the client.

Article 4 **Preventive measures undertaken by the tax authorities**

1. Tax authority apply the requirements of Article 11, of law no. 9917, of May 19th, 2008 “On the prevention of money laundering and financing of terrorism”.

2. The tax authority should create a centralized system for the collection and analysis of the data. To this end the General Directorate of Taxation will create a central unit that will be responsible for the identification and the collection of suspicious transactions. The General Director of the General Directorate of Taxation will appoint within the directorate at the head of this unit a person of a management level.

3. The Central Unit has the following competencies and functions:

a) appoint a contact person in the headquarters and every regional directorate that will liaise with the competent authority;

b) organizes the monitoring process and ensures the implementation of the legal responsibilities regarding the prevention of money laundering and fight against the terrorism financing;

c) analyses every transaction that has been identified as suspicious and determines whether he/she considers it suspicious according to the law and this instruction;

d) if the information is categorized as suspicious the head of the unit upon authorization from the general director or his deputy, will forward this information to the competent authority;

e) will be advised by other employees of the General Directorate of Taxation regarding the ways of identification of suspicious transactions;

f) will organize special training of the General Director of Taxation to acquaint him with laws and policies concerning money laundering and financing of terrorism; should have the necessary abilities to scrutinize the transactions in order to detect money laundering and financing of terrorism; be aware of the reporting requirements and the filing of reports; be aware of customer due diligence, as well as client’s risk categories;

g) prepares a written report at least twice a year regarding the monitoring process (including the number of suspicious reports identified) and presents it to the General Director of the General Directorate of Taxation;

h) monitors the taxpayers as well as the transactions referred to the competent authority and communicates that through the General Director of Taxation to the competent authority twice a year .

4. The head of the central unit and its employees should be vested with the authority to obtain any information necessary for the fulfilment of their duties. They should preserve the confidentiality of the data obtained through their activity.

5. The head of the central unit will report only to the General Director of Taxation.

6. The General Director of Taxation will appoint the internal audit to check the compliance with obligations of this instruction of the central unit.

7. The general Director of Taxation will issue a regulation regarding the organization and operation of the central unit as well as the forms of its cooperation with other departments in the tax administration, pursuant to law no. 9917, date 19.05.2008.

Article 5

Suspicious activity reporting

1. Tax authorities will report to the competent authority immediately and in any case no later than 72 hours upon the registration of the transaction, any suspicion, signal, notification or data relevant to money laundering and/or financing of terrorism.

2. When a suspicious transaction is detected a suspicious activity report should be filed with the competent authority (according to the forms and guidelines in annexes II and III that are part of this instruction).

3. Annex I attached to this instruction contains suspicious guiding indicators that lead to the detection of money laundering and terrorism financing used as standards nationally and internationally.

4. It is forbidden to the employees of the tax authorities to inform the client or any other person regarding the verification procedures of suspicious cases and any other reports sent to the competent authority.

Article 6

Ongoing monitoring of the business relationship with the customers and enhanced due diligence

1. Tax authorities should perform ongoing monitoring of the activities of their entities and their declarations to ensure that they are in line with the knowledge of the entities, objective of their activity and their categorization according to the level of risk that they represent.

2. Tax authorities should continuously update client relevant data in accordance with paragraph 1 of this Article, and this update should take place immediately, when there are reasons to suspect that the conditions and factual situation of the client has changed.

3. To mitigate the risk of money laundering in addition to the categories defined in articles 8 and 9, of law no. 9917, the tax authorities will define other categories of clients and transactions that should be subject to enhanced due diligence.

Article 7

Information exchange

1. The information exchange among the two institutions is based on mutual trust.

2. Tax authorities will respond to requests of the competent authority not later than 15 days from the date the information request is received.

3. In urgent cases, when there are grounded reasons for money laundering and financing of terrorism and it is believed that there is a pressing need for information from the General Directorate of Taxation, the contact person of the competent authority will present a verbal request to the contact person in the General Directorate of Taxation. Such requests should be documented within three days with a written letter sent to the General Directorate of Taxation. The information requested verbally will be provided by the tax authorities to the competent authority within 48 hours.

4. When the competent authority has frozen or is about to freeze a transaction for 72 hours and request information from the General Directorate of Taxation, this information should be provided within 48 hours. The request can verbal or in writing. Every verbal request should be documented in

writing within three working days.

5. The competent authority should respond to requests of the tax authorities no later than 15 days from the day the information request is received. In urgent cases the request can be made verbally from the contact persons and should be documented in writing within three days.

6. If there are objective reasons for the postponement of responses this could be demanded verbally by contact persons by providing arguments and reasons, as well as document it in writing. Disagreements are resolved by the General Director of Tax Authority and the competent authority or the Minister of Finance afterwards.

7. The General Directorate of Taxation, pursuant to Article 22, of law no. 9917, of May 19th, 2008, will provide database access to the competent authority (GDPML). The method and technical specifications, will be described from the relevant specialists and the officials of those institutions. This access should be provided within two months of entry into force of this instruction.

Article 8

Employee responsibilities

1. Employees of the General Directorate of Taxation will ensure the confidentiality of all documents, data and information exchanged with the competent authority; for every unauthorized disclosure of this information the employee will be subject to penal or administrative liability.

2. Employees of the General Directorate of Taxation that provide confidential information to the competent authority in accordance with legal requirements are exempted from penal or administrative liability.

3. For the violations or noncompliance with the law and this instruction when they do not constitute a penal offense, the employees of the General Directorate of Taxation, will have administrative responsibility and will be sanctioned by the competent authority, according to Article 27 of the law no. 9917, of May 19th, 2008.

Article 9

Date of entry into force

This instruction enters into force upon publication in the official gazette

MINISTER OF FINANCE

Ridvan Bode

TYOLOGIES OF SUSPICIOUS ACTIVITIES USED AS GUIDING INTERNATIONAL STANDARDS FOR THE DETECTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

SUSPICIOUS ACTIVITY INDICATORS

The following list provides general examples of types of activities that should be scrutinized by the tax inspectors during the taxpayer's auditing:

- Taxpayer manages a charity, humanitarian, educational organization that seems suspicious in line with the enhanced due diligence regarding those entities.
- Taxpayer manages its business (e.g. a currency exchange bureau) without having a Taxpayer's Identification Number (TIN).
- Taxpayer hesitates or refuses to provide information regarding its business activity or supplies unusual or suspicious documents to identify his/her business.
- The purpose of the taxpayer's transaction does not make sense from the business point of view or does not fit the declared type of business and strategy.
- Taxpayer's net worth does not match the amount of funds.
- The information provided by the taxpayer regarding the source of funds is false,

- misleading or outright fake.
- When asked the taxpayer refuses to identify or does not convincingly indicate the source of the legal funds and assets.
- The taxpayer (or the person publicly known as a partner of his) has a questionable background that has been subject of media reports regarding potential penal, civil or regulatory cases.
- Use of numerous “legal persons”, with the only purpose of carrying out fund transfers.
- Carrying out a business activity without a clear objective in countries and territories identified by the competent authority as non cooperative.
- Taxpayer is located or has subsidiaries in countries or territories identified as non cooperative from FATF.
- Taxpayer presents himself as the agent of an undeclared person and refuses or avoids for no legally acceptable reason to provide information regarding the person or the company that it represents.
- Taxpayer has difficulties in describing the nature of his business and lacks general knowledge of the industry in which he operates.
- Taxpayer opens and maintains several sets of bookkeeping .
- Taxpayer presents fraudulent invoices to the Directorate of Taxation.
- Taxpayer, uses front transactions through nominees (transactions that have no economic background).
- The taxpayer performs cash transactions frequently despite the sanctions.
- The taxpayer account contains numerous foreign currency transactions or monetary instruments that when aggregated amount to considerable sums.
- Buying and selling of securities with no apparent reason, under circumstances that are unusual and not linked to risk or investment diversification.
- Transactions that do not fit the normal market patterns (e.g. market size, frequency, prices, premature closing of loss making activities), especially when cash is concerned or checks that can be endorsed by third parties.
- Incoming payments made through third party checks or endorsed by several persons.
- The taxpayer is involved in transactions that do not have a business background, are not strategically apparent investments, or are not in conformity with the his declared business strategy.
- The activities and transactions of the taxpayers are too complex.
- Commingling of taxpayer’s business and personal funds.
- Taxpayer’s account show wire transfers that have no apparent business reasons or do originate from countries identified as risky for money laundering purposes, bank secrecy heavens, countries and off shore banks, countries linked to terrorist activities (in other words countries that are subject to sanctions non cooperative countries, supporting countries).
- Taxpayer will make a deposit in order to make a long term investment followed immediately with a request for liquidation of the position and transfer of the proceeds from the account.
- Taxpayer seeks to process the transaction in such a way as to avoid the normal documentation from the company.
- Taxpayer without credible reasons or through unusual behavior gets involved in transaction including particular types of securities such as bearer instruments that despite being legal have been used in fraudulent schemes and money laundering activities. (Such transactions may warrant verification procedures to ascertain the legality of the taxpayer’s activity).
- Taxpayer’s account contain a level of activity that is hard to explain including debt instruments.
- Taxpayer’s account has incoming funds or assets that exceed his known level of income or financial means.

- Transactions performed on behalf of unknown third parties.
- Transfers carried out through numerous national or foreign banks .
- Maintaining and utilisation of many unnecessary bank accounts.
- Reassessment of the companies assets beyond the market values.
- Declaration of high profits that are unusual for the type and domain of the commercial activity.
- Considerable amounts of financing of the companies provided by partners, while the source of the funds is not quite clear if it is generated by profits of the commercial activity or from legal sources.