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APRIL 2020 ISSUE

Muja Law brings you the Legal Bulletin. This publication is a collection of the most important legal and tax updates published by our office during April.

The purpose of this monthly issue is to help professionals and businesses have a clear understanding of the dynamics of Albanian legislation and easily navigate through recent legal changes frequently published by our legal office.



DECISION OF THE PARLIAMENT NO. 18/2020, DATED 23.4.2020

ON GRANTING CONSENT FOR THE EXTENSION OF THE STATE OF NATURAL DISASTER:

- In virtue of the above decision, the Albanian Parliament has given its consent for the extension of the state of natural disaster in the Republic of Albania, declared with Decision No. 243, dated 24.3.2020, of the Council of Ministers, *"On the declaration of the state of natural disaster"*.
- *As for the above, the state of natural disaster in Albania will continue until 23.6.2020.*

VARIOUS ORDERS FROM THE ALBANIAN MINISTRY OF HEALTH AND SOCIAL PROTECTION TO PREVENT FURTHER SPREAD OF COVID-19 VIRUS

- Order No.216, dated 01.04.2020, *"On an amendment to Order No.190, dated 19.03.2020 'On closing of activities in public and private educational institutions and nurseries for preventing the spread of COVID-19 infection'"*, provides that these institutions will remain closed until the end of the epidemic, without providing a specific date for their opening.
- Order No.217, dated 01.04.2020, *"On an amendment to Order No.164, dated 12.03.2020 'On closing of bars, restaurants and pubs, fast-food restaurants and limitation of services offered by the accommodation structures that offer client services'"*, provides that these services will be closed until the end of the epidemic caused by COVID-19 infection.
- However, during the day, the bars and restaurants activities are not prohibited to provide service to customers through catering or delivery.
- Order 218, dated 01.04.2020, *"On an amendment to Order No.160, dated 11.03.2020 'On the termination of planned chirurgical interventions in all private and public hospital structures'"*, provides that this termination will continue until the end of the epidemic caused by COVID-19 infection.
- Order No.219, dated 01.04.2020, *"On an amendment to Order No.147, dated 09.03.2020 'On the suspension of planed chirurgical interventions in 'Mother Tereza' hospital center and 'Shëfqet Ndroqi' hospital'"*, provides that these interventions will remain suspended until the end of the epidemic.
- Order No.220, dated 01.04.2020, *"On an amendment to Order No.158, dated 11.03.2020 'On the suspension of the functioning of evaluation commissions for persons with limited abilities and work invalidity'"*, provides that these public functions will remain suspended until the end of the epidemic caused by COVID-19 virus.
- Order No.221, dated 01.04.2020, *"On an amendment to Order No.165, dated 12.03.2020 'On closing of dental cabinets/clinics'"*, provides that this closure will continue until the end of the epidemic caused by COVID-19 infection.
- Order No.222, dated 01.04.2020, *"On an amendment to Order No.132, dated 08.03.2020 'On closure of all public and non-public activities and cancelation of*

mass gatherings in open or closed spaces”, provides that these measures will be postponed until the end of the epidemic caused by COVID-19 infection.

- *Order No.223, dated 01.04.2020, “On an amendment to Order No.156, dated 10.03.2020 ‘On taking special measures for preventing the spread of the infection caused by COVID-19”, provides that these measures, will remain in force until the end of the epidemic caused by coronavirus. Some of these measures are as follows:*

1. Closure of facilities that provide nightclub services;
2. Closure of indoor facilities dedicated to entertaining children and youth;
3. Closure of activity of gyms, sports centers, swimming pools;
4. Closure of activity of internet centers;
5. Closure of activity of cultural and entertainment centers;
6. For public services for which close contact with the public is required, institutions must provide staff with protective tools in order to protect their health;
7. Public and private institutions must draft according to their area of responsibility a plan of measures to ensure the provision of priority services by prioritizing the category of services primarily through the provision of online service, working remotely and only in case of necessity to provide the service through physical contact. For services that require direct contact with the public, institutions should provide workers with protective work tools to safeguard their health;
8. Public institutions providing reception services to the public at the help desk must take measures to maximize the use of online services and the e-Albania platform;
9. Postal service bodies must ensure continuity of service and develop a plan of measures to limit employee contact with the public and avoid crowding of the public at the help desks or other indoor facilities;
10. All persons entering in Albania from epidemiological risk areas identified as such by the World Health Organization are required to complete the traveler file at the border entry points and to self-quarantine for a period of 14 days from the date of entry at the border; otherwise, they may be subject to fines.

NORMATIVE ACT OF THE COUNCIL OF MINISTERS NO. 16, DATED 17.4.2020 "ON PARDONING THE ADMINISTRATIVE MEASURES OF A PUNITIVE NATURE IMPOSED DURING THE PERIOD OF INFECTION CAUSED BY COVID-19", (“*NORMATIVE ACT 16*”).

- Normative Act 16 provides the pardoning of all administrative measures of a punitive nature, imposed by the relevant state authorities, for the violation of the rules or legal and sub-legal acts issued under the measures taken to prevent and combat the infection caused by COVID- 19, starting from the moment of





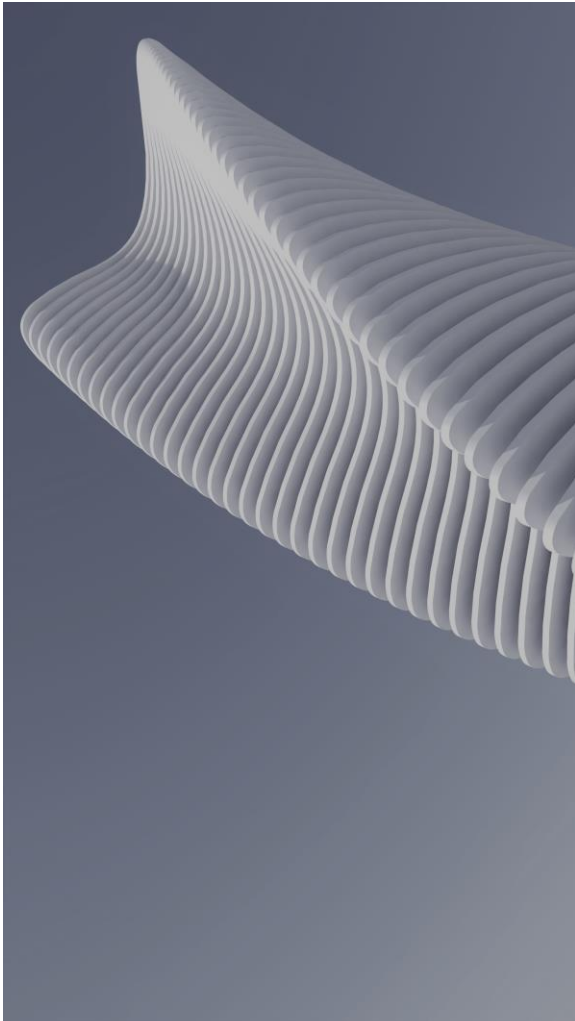
ascertaining this disease in the territory of the Republic of Albania until 17.4.2020.

- The return of the amount of the pardoned but paid obligation, for administrative measures with a fine, is taken from the respective voice of the state budget or the institution's budget in which the amount was collected, by order of the first authorizing officer, and is passed automatically in the bank account of the individual or in its absence this amount is sent to the state institution that has imposed the fine to hand over to the beneficiary subject.
- The return of the amounts to the bank account of the beneficiary subject or the state institution's that imposed the administrative measure with a fine shall be done within May 15, 2020.
- All state institutions must send the lists of persons against whom administrative fines have been imposed, including the amount and data required for their return by April 30, 2020.
- The manner and detailed rules for the return of paid amounts are determined by instruction of the Minister of Finance and Economy.
- All administrative measures of a punitive nature, except for those mentioned above, such as permits/licenses and blocked assets, must be returned within 15 May 2020 to the beneficiary subject.
- The heads of each of the state institutions, which have imposed administrative measures are charged with issuing the relevant instructions for determining the manner of returning the pardoned obligation.

LAW NO.35/2020 "ON SOME AMENDMENTS TO LAW NO.7895, DATED 27.01.1995 'CRIMINAL CODE OF THE REPUBLIC OF ALBANIA", AS AMENDED ("LAW NO.35/2020")

Article 130/a "Domestic violence" of the Criminal Code is amended as follows:

- Beating, as well as any other act of physical, psychological violence against the spouse, ex-spouse, cohabitant or ex-cohabitant, close gender (predecessor, successor, siblings, uncle, aunt, grandchild, granddaughter, siblings' children), close relatives (father-in-law, mother-in-law, son-in-law, daughter-in-law, sister-in-law or brother-in-law, stepfather, stepmother), or another person that is in an intimate relationship or relationship with the perpetrator, resulting in violation of his physical, psycho-social and economic integrity is punishable by up to three years in prison.
- Serious threat of murder or grievous bodily harm to the spouse, ex-spouse, cohabitant or ex-cohabitant, close gender (predecessor, successor, siblings, uncle, aunt, grandchild, granddaughter, siblings' children), close relatives (father-in-law, mother-in-law, son-in-law, daughter-in-law, sister-in-law or brother-in-law, stepfather, stepmother), or another person that is in an intimate relationship or relationship with the perpetrator, resulting in violation of his mental integrity is punishable by imprisonment of up to four years.
- Intentionally inflicted injury on the spouse, ex-spouse, cohabitant or ex-cohabitant, close gender (predecessor, successor, siblings, uncle, aunt, grandchild, granddaughter, siblings' children), close relatives (father-in-law,



mother-in-law, son-in-law, daughter-in-law, sister-in-law or brother-in-law, stepfather, stepmother), or another person that is in a relationship or former intimate relationship with the perpetrator, which has caused temporary incapacity for work more than nine days, is sentenced to imprisonment of up to five years.

- The same offenses, committed repeatedly, or in the presence of children, are punishable by one to five years in prison.

After article 242 of the Criminal Code is added article 242/a “Failure to implement the measures of the state authorities during the state of emergency or during the state of the epidemic” with the following provision:

- Failure to comply or performing actions contrary to legal or sub-legal acts issued by state authorities, in function of the epidemic state or the implementation of extraordinary measures, by the person against whom an administrative measure has been previously given, constitutes a criminal offense and is punishable with a fine or imprisonment of up to six months.
- The same act, when committed in the exercise of commercial activity, endangering the health of people, is punishable by a fine or imprisonment of up to two years.
- Failure to comply with the order given by the competent authorities for quarantine or isolation, or violation of the rules of quarantine or isolation by the person carrying or not of the infectious disease, to whom this obligation has been notified by the relevant state authorities, is punishable by imprisonment from two to three years.

After article 89/a of the Criminal Code is added article 89/b “Spreading of infectious diseases”, with the following provision:

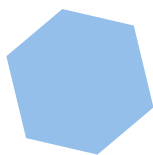
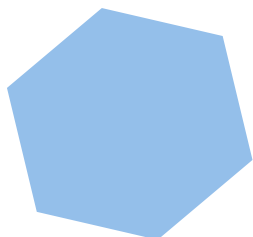
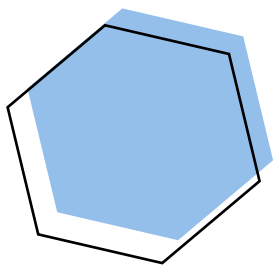
- Deliberate spread of infectious disease with a high risk to health, through actions or omissions by the person diagnosed as the carrier of the disease or by the person who intends to spread it, is punishable by imprisonment of two to five years.
- When this offense is committed through negligence, it is punishable by a fine or up to two years in prison.
- This same act, when it has caused serious consequences for the people’s health or life, is punishable by three to eight years in prison.

NORMATIVE ACT OF THE COUNCIL OF MINISTERS NO.13, DATED 02.04.2020, “ON SPECIAL MEASURES IN THE FIELD OF JUDICIAL BAILIFF SERVICE, MEDIATION AND ADMINISTRATION OF BANKRUPTCY PROCEEDINGS DURING THE DURATION OF THE COVID-19 EPIDEMIC” (“NORMATIVE ACT NO.13”).

- Normative Act No.13 intends to protect the legitimate interests of citizens who may be affected by the activity of public and private judicial bailiffs, mediation or

administration in bankruptcy proceedings, during the epidemic caused by the spread of COVID-19. It provides special measures for the conducting of activity of state and private judicial bailiff services, mediating and bankruptcy administering proceedings during the duration of the epidemic.

- From the date of entry into force of the Normative Act No.13 until the end of the epidemic situation caused by the spread of COVID-19, the deadlines for performing the procedural actions of state or private judicial bailiff, mediator and administrator in bankruptcy proceedings shall be suspended. When the time limits for performing procedural actions as provided for in the legislation in force begin during the period of suspension, they shall be extended until the end of the epidemic.
- The above provision does not apply in the following cases:
 - a) For the execution of executive titles arising from family matters, with the object of care, obligations and respect for the minors' rights, custody, adoption, parental responsibility, caretaking and alimony;
 - b) For the execution of executive titles, subject to protection orders and immediate protection orders;
 - c) On the enforcement of executive titles, with the object of measures of securing a lawsuit on administrative and civil matters, in which the court has given a decision on the securing of a lawsuit or a decision on provisional enforcement, when from the delay in the execution or performing of procedural actions it becomes impossible to execute these executive titles after the end of the epidemic;
 - d) If it is necessary to avoid the damage of bankruptcy measure;
 - e) For mediation for the resolution of disputes in the criminal field, when deemed necessary during the investigation to protect the minor's interests.
- During the duration of the epidemic caused by the spread of COVID-19, in view of the implementation of the by-laws issued by the responsible state authorities, public and private enforcement bodies, mediators and bankruptcy administrators, in all cases, shall take specific organizational measures to avoid crowding, close contacts between individuals, and the public presence in the premises of the judicial bailiff, mediator and bankruptcy administrator.





NORMATIVE ACT OF THE COUNCIL OF
MINISTERS NO.12, DATED 02.04.2020
“FOR AN ADDITION TO THE COUNCIL
OF MINISTERS' NORMATIVE ACT NO.3,
DATED 15.3.2020, ‘ON SPECIAL
ADMINISTRATIVE MEASURES DURING
THE DURATION OF THE INFECTION
PERIOD CAUSED BY COVID-19”, AS
AMENDED (“*NORMATIVE ACT NO.12*”)

- ❖ All individual lessees who have a lease agreement for their residence or any other document proving the lessor-lessee contractual relationship, prior to the declaration of the epidemic state, who have an employment contract but have suspended/terminated it as a result of the COVID-19 situation, will not pay the rent for two months, April and May 2020.
- ❖ All student lessees who have a lease agreement for their residence or any other document proving the lessor-lessee contractual relationship, prior to the declaration of the epidemic state, will not pay the rent for two months, April and May 2020.

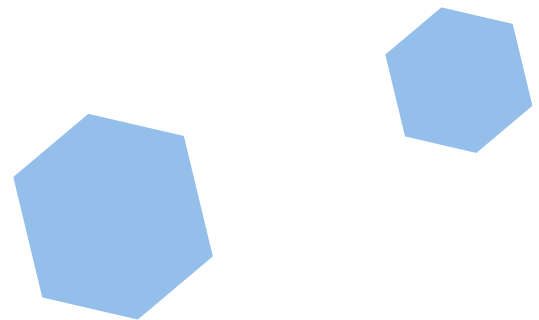
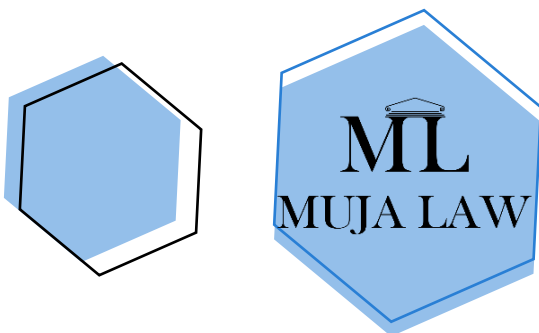
All lessees natural/legal persons with an income of up to ALL 14,000,000 (fourteen million) per year, who have a notarized lease contract for the purpose of their economic activity, signed prior to the declaration of the epidemic state, and have stopped their activity as a result of the situation caused by COVID-19 will not pay the rent for two months, April and May 2020.

The arrears of these two months shall be paid by the lessee in a proportionate and agreed method with the lessor after May 2020. For those contracts ending before May 31, 2020, the arrears shall be paid by the lessee within three months after the date May 31, 2020.

All lessees subject to this Normative Act who complain about the lessor because of the latter's non-compliance with the above obligations shall address the General Tax Directorate by electronic communication.

Lessors who fail to comply with the above provisions shall be subjects to a fine five times the respective monthly rent.

The General Tax Directorate is responsible for following and implementing the provisions of this Normative Act and issuing relevant instructions.





NORMATIVE ACT NO. 14, DATED 11.4.2020

“ON SOME AMENDMENTS TO NORMATIVE ACT OF THE COUNCIL OF MINISTERS NO.3, DATED 15.03.2020, ‘ON SPECIAL ADMINISTRATIVE MEASURES DURING THE PERIOD OF INFECTION CAUSED BY COVID-19 INFECTION’, AS AMENDED” (*NORMATIVE ACT NO.14*)

All lessees, natural/legal persons, with an income of up to 14,000,000 (fourteen million) ALL per year, who possess a notarial lease contract for the purpose of their economic activity, signed before the declaration of the state of epidemic, despite the fact that their activity might be allowed or stopped as a result of the situation caused by COVID-19, *will not pay their rent obligation for two months, April and May 2020.*

Contracting authorities, in order to meet the needs for necessary goods/services, for a very short delivery time, or for particularly convenient cases, which are presented in a very short time and at a lower price than normal market prices, to cope with the situation created by the epidemic caused by COVID-19, during all its duration, in order to meet the emergency needs perform procurement procedures with negotiation, without prior announcement and enter into supply contracts for these goods with economic operators referred to as “active processing business”, as provided by the Customs Code.

Active processing businesses that produce goods or provide services necessary to cope with the situation created by COVID-19, after the entry into force of this Normative Act, if they have convenient goods/services in virtue of this provision, express their availability to the Centralized Purchasing Agency (CPA).

Contracting authorities will negotiate only with the operators listed in CPA, according to the goods/services that they want to procure. CPA has the obligation to daily update the list of businesses that express their availability.

If the need cannot be met by these operators, the contracting authorities may turn to other economic operators to meet the

demand for these goods, in accordance with the negotiating procedure, without prior notice. The contracting authorities that will procure goods or services, in virtue of this provision, will be determined by a decision of the Council of Ministers.

All the procedures used for concluding contracts that are dictated by the state’s essential interests are excluded from the rules defined above.

DECISION OF THE COUNCIL OF MINISTERS NO. 284, DATED 10.4.2020 “ON SOME AMENDMENTS TO THE DECISION OF THE COUNCIL OF MINISTERS N.254, DATED 27.03.2020 ‘ON THE DETERMINATION OF THE PROCEDURES, DOCUMENTATION AND THE AMOUNT OF FINANCIAL ASSISTANCE FOR EMPLOYEES IN BUSINESS SUBJECTS WITH AN ANNUAL INCOME OF UP TO ALL 14 MILLION, ECONOMIC AID AND PAYMENT OF UNEMPLOYMENT INCOME PAYMENTS DURING THE PERIOD OF NATURAL DISASTER, DECLARED AS A CONSEQUENCE OF COVID-19” (*“DECISION NO.284”*)

The application for financial assistance is made by the self-employed/employee. Individuals who are on more than one payroll, when both activities have been closed as a result of the

coercive measures, receive only a minimum wage as financial assistance.

In the event that only one of the activities is allowed, the individual, who is on more than one payroll, does not receive the financial assistance in the minimum wage.

The beneficiaries of financial assistance are the self-employed/employed individuals in subjects with an annual income of up to 14 000 000 (fourteen million) ALL, according to the following categorization:

- a) Self-employed natural persons;
- b) Unpaid family workers of the natural commercial person;
- c) Employees in commercial natural persons;
- c) Employees in legal entities.

Self-employed/employed individuals who have earned a gross income of more than 2,000,000 (two million) ALL from their wage for 2019 do not receive financial assistance.



DECISION OF THE COUNCIL OF MINISTERS, NO. 305, DATED 16.4.2020 "ON DETERMINING THE PROCEDURES, DOCUMENTATION AND THE AMOUNT OF OBTAINING THE FINANCIAL AID FOR CURRENT EMPLOYEES AND EMPLOYEES DISMISSED AS A RESULT OF COVID-19" ("DECISION")

The Decision follows several financial relief packages that the government has recently introduced to alleviate the economic difficulties caused by the pandemic in Albania and determines the categories of beneficiaries as well as the amount of financial aid for the affected subjects.

1) A financial aid of 40,000 (forty thousand) ALL will be provided for employees in subjects with an annual income over 14 000000 (fourteen million) ALL, which have closed their activities following the orders of the Minister of Health and Social Protection and who have been at work on the date of entry into force of these orders;

2) A financial aid of 40,000 (forty thousand) ALL will be provided to former employees in subjects that are allowed to carry out activities according to the orders of the Minister of Health and Social Protection, who have been dismissed from work from the date of entry into force of these orders by April 10, 2020. The day of E-sig 027 form filing should not be later than April 10, 2020;

3) For employees in subjects with an annual income of up to 14 000 000 (fourteen million) ALL, which are allowed to perform activities according to the orders of the Minister of Health and Social Protection, who have been at work until the date of entry into force of the Minister of Health and Social Protection's orders, a financial aid of 40,000 (forty thousand) ALL will be provided;

4) For employees of natural or legal subjects, which exercise their activity as accommodation structures, who result in the payroll until the date of the Minister of Health and Social Protection's orders, will be provided a financial aid of 40 000 (forty thousand) ALL. If the subject mentioned in this point exercises several types of activities, only the employees in the activity of the accommodation structure shall benefit the financial aid;

Financial aid to employees, in the amount specified in the above points, covers the period April - June 2020 and is obtained only once as a single amount.

The following subjects do not benefit from the Decision:

- a) Employees according to point 3 above, who have benefited according to point 2;
- b) Employees according to point 3 above, employed in subjects:
 - i. with object of their activity trading of food products, fruits - vegetables, pharmaceuticals;

ii. registered practitioners in professions such as: lawyer, notary, specialist physician, pharmacist, nurse, veterinarian, architect, engineer, physician-laboratory technician, designer, economist, agronomist, registered accounting expert, approved accountant and property evaluation expert, which are allowed to perform the activity according to the orders of the Minister of Health and Social Protection;

c) Employees who benefit according to decision No. 254, dated 27.3.2020, of the Council of Ministers, "On the determination of procedures, documentation and the amount of obtaining financial assistance for employees in business subjects with an annual income of up to ALL 14,000,000, economic aid and unemployment benefit payment during the period of natural disaster declared as a result of COVID-19";

d) Employed individuals, who have realized for 2019 gross income from their salary over 2 000 000 (two million) ALL;

e) Double-employed individuals, where one of the activities belongs to the category of activities mentioned in point b above;

f) Employees of state institutions as well as employees in companies with state capital;

g) Non-profit organizations.

Criteria and documentation for obtaining financial aid for current and dismissed employees as a result of COVID-19

Financial assistance is calculated and given to employees listed in the updated payrolls according to the E-Sig 027 form, until the date of entry into force of the orders of the Minister of Health and Social Protection.

An employee who is on more than one payroll list receives only one payment as financial aid.

In order to benefit from financial aid, the employee must have been employed until the date of entry into force of the orders of the Ministry of Health and Social Protection.

Applicants must submit to the General Tax Directorate, through the e-filing portal, the request with the beneficiaries' data, which include:

a) Identification data of the taxpayer subject provided with Subject's Unique Identification Number;

b) Beneficiary identification data, including:

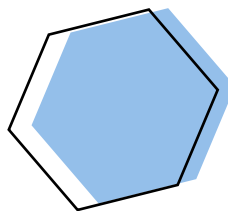
i. Name, surname, telephone number, e-mail address;

ii. Personal identification number of the beneficiary;

iii. The bank where the beneficiary has the current bank account;

iv. IBAN of the bank account.

This Decision extends its effects during the state of the epidemic caused by COVID-19, but not more than 3 (three) months.





NORMATIVE ACT OF THE COUNCIL OF MINISTERS NO. 18, DATED 23.4.2020 “ON SOME AMENDMENTS TO LAW NO. 8438, DATED 28.12.1998, ‘ON INCOME TAX”, AS AMENDED (“NORMATIVE ACT 18”)

Normative Act 18 provides that for taxpayers with a turnover of up to 14 000 000 (fourteen million) ALL, the prepayment installments of the 2020 profit will not be paid.

Furthermore, the Normative Act 18 specifies that for taxpayers with a turnover of over ALL 14 000 000 (fourteen million), profit tax installments for the second and third quarter tax periods, April-June and July-September 2020, will not be prepaid. [Payments for these installments are postponed to April-September 2021.](#) This exception does not apply to taxpayers who carry out economic activities in the field of banking, telecommunications, trade in pharmaceuticals, food products and fruit sales, as well as taxpayers who carry out economic activities in the field of tourism, active processing with ordering material and call center.

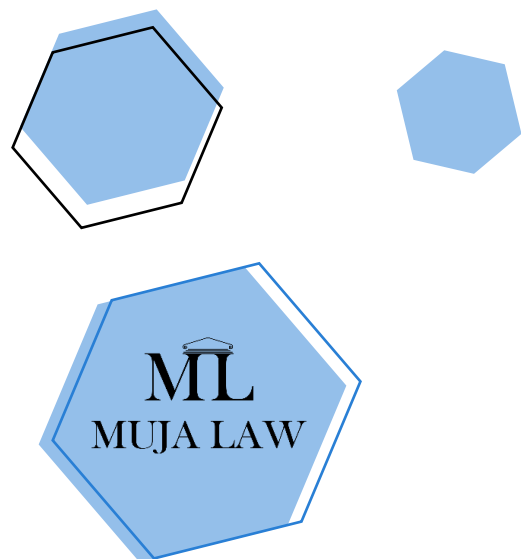
Additionally, profit tax installments for tax periods April-December 2020, will not be paid by taxpayers who conduct economic activities in the field of tourism and active processing with ordering material and call center. [Payments for these installments are postponed to April-December 2021.](#)

The submission of the annual individual income statement for 2019 to the tax administration and the payment of the obligation, if applied, [shall be made no later than July 31, 2020](#)

NORMATIVE ACT OF THE COUNCIL OF MINISTERS NO. 19, DATED 23.4.2020 “ON SOME AMENDMENTS TO THE LAW NO. 9632, DATED 30.10.2006, ‘ON THE LOCAL TAX SYSTEM”, AS AMENDED (“NORMATIVE ACT 19”)

Normative Act 19 provides that investments within reconstruction programs, with the aim of coping with the consequences of natural disasters, are excluded from the payment of the tax of the effect on infrastructure from new constructions.

Normative Act 19 additionally specifies that the simplified profit tax prepayment installments in 2020 will not be paid.



THE COMMISSIONER'S OFFICE ON DATA PROTECTION IN ALBANIA (HEREIN REFERRED TO AS THE "COMMISSIONER'S OFFICE") HAS ISSUED A GUIDELINE FOR THE PROCESSING OF PERSONAL DATA IN SPECIFIC SECTORS IN RELATION TO THE ANTI COVID-19 MEASURES ("GUIDELINE").

The Guideline provides some clarifications and instructions on some aspects regarding the protection of personal data in certain sectors, during the infection caused by the COVID-19 in Albania. These aspects address the processing of personal data, in the framework of measures against coronavirus, in sectors such as employment, telecommunications, health and education.

In virtue of this Guideline and the applicable legislation in force, the Commissioner's Office highlights that the processing of personal data in the fight against COVID-19 does not constitute a reason for restricting the rights and freedoms of citizens. On the other hand, the legislation on personal data protection does not prevent and/or restrict the rights and obligations of controllers regarding the processing of personal data in the fight against COVID-19.

Furthermore, the Commissioner's Office emphasizes that the aspects addressed in this Guideline derive from the correct interpretation of personal data protection legislation and are also in full harmony with the positions of the European Union (EU) counterpart institutions and Council of Europe (CoE), as well as in the spirit of the EU Regulatory Framework and the CoE instruments with the object and focus that of personal data protection.

Personal data processing by employers

In the conditions of the unusual and difficult situation caused by the spread of COVID-19, employers are facing difficulties and even bigger questions regarding the processing of employees' data. A part of the employers have decided to keep their staff engaged through work from home or by teleworking.

Other categories of employers, due to the nature of their activity, continue to engage their employees in normal workplaces and, in addition to hygienic-sanitary measures and by insuring social distancing in their respective premises, are continuously monitoring the health condition of their employees, in order to prevent the spread of COVID-19.

In connection with the above, employees are, inter alia, subject to constant control over the timely detection of any possible COVID-19 symptoms, as well as monitoring with video surveillance systems regarding compliance with hygienic-sanitary measures.

Also, employees engaged through work from home or teleworking, access employers' platforms through virtual private

networks (VPN), or use private communication channels (such as personal e-mail addresses), etc.



In these circumstances, the Commissioner's Office clarifies that for the purposes of the measures against COVID-19, in principle, employers may process personal data of employees (such as data obtained from additional monitoring of their health), in quantities and qualities that - reasonably - exceed the usual data processing in normal working conditions.

Processing involves not only collecting and storing processed health data, but also transmitting it to law enforcement agencies in charge of the fight against COVID-19, including, but not limited to, law enforcement agencies conducting epidemiological surveillance (such as provided by the legislation in the field of prevention of infectious diseases).

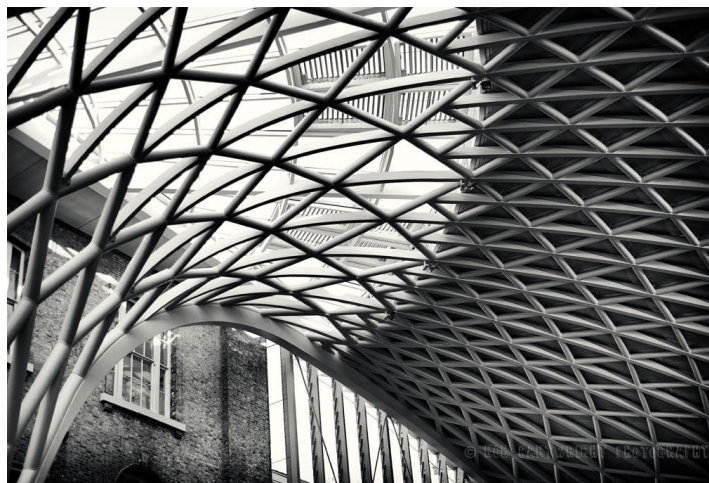
On the other hand, the processing in question must be carried out in accordance with the principles and criteria of personal data processing provided in Law no. 9887, dated 10.03.2008 "On the protection of personal data", as amended ("Law on Personal Data Protection").

Also, the use of virtual private networks (VPN), as well as other private communication channels, for the purposes of enabling work from home or teleworking, as well as the use of video surveillance systems to monitor compliance with hygienic-sanitary rules, in addition to the above-mentioned provisions, must be accompanied by technical-organizational measures and strict rules to ensure the data's' inviolability and confidentiality.

For the above purposes, the Commissioner's Office appeals to all controllers to act, additionally, in compliance with the bylaws of the Commissioner of the Right to Information and Personal Data Protection.

In virtue of the above, the controllers are obliged to minimize any potential risk that the processing of personal data might present to human dignity and violation of private life, as well as take measures to return to the "normal" state of personal data processing (including, as the case may be, permanent deletion of processed data), after the state of natural disaster and the spread of COVID-19 has ended.

In particular, employers should not process personal data beyond what is necessary for the purposes of implementing anti COVID-19 measures. The processing of personal data should be carried out in proportion to the purpose of the processing, and as far as the processing is appropriate, necessary and brings more advantages than disadvantages, for the realization of the purpose in question.



Data location transmission processed on electronic communications networks

One of the forms currently being used in various countries around the world, regarding the prevention of the spread of COVID-19, is contact tracing through individuals' location data transmission, obtained from the operators of electronic communications networks.

Analysis of location data trends is being used as a tool for successfully coping with the crisis caused by COVID-19.

Location data means any data processed in an electronic communications network, indicating the geographical position of the end device (mobile, tablet, etc.) of an electronic communications network user. This data includes concrete information on how equipment and people move in space from time to time.

The Commissioner's Office, in compliance with the practice of the EU countries in relation to this aspect, as also in compliance with the Law on Personal Data Protection, provides that the operators of electronic communications networks, *before transmitting the location data should make an analysis of the impact that this type of processing has on the private life of citizens.*

Therefore, the Commissioner's Office provides that the transmission of location data performed in an aggregated and anonymous manner - e.g. to signal cases of violation of social distancing measures, or to show movements of individuals to go, or to leave the infected areas - as may be necessary within the measures to prevent COVID-19, or in the context of epidemiological surveillance, *does not constitute a violation of the provisions of the Law on Personal Data Protection and bylaws issued pursuant to it.*

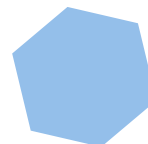
In any case, the processing of the data in question must be carried out in accordance with the principles and legal criteria set out in the Law on Personal Data Protection.

Also, the Commissioner's Office clarifies that, in any case, the obligation of processing of location data in accordance with the aforementioned legal provisions, does not affect the obligations of the operators of electronic communications networks to act in accordance with the provisions of sectoral legislation.

Based on the practice followed so far in EU countries, the Commissioner's Office, in any case, provides that the processing of large-scale personal data (despite their aggregation and anonymization) can be performed, in principle, only when - on the basis of scientific evidence - the potential benefits in relation to the public health guarantee by a digitalepidemiological surveillance (e.g. contact tracing), including their accuracy, outweigh (therefore, are greater than) the benefits that may arise from other alternative solutions, which would be less intrusive in private life.

While the real time information on the spread of COVID-19 may be useful for its isolation, it is important to note that, in these cases, it is nevertheless preferable to apply less intrusive technical solutions in private life.

As mentioned above, the development and application of these surveillance methods should be based on a preliminary assessment of the potential impact of data processing intended to be collected on the fundamental rights and freedoms of individuals.



Data processing in relation to the epidemiological surveillance

The Commissioner's Office clarifies that data processing related to the epidemiological surveillance as provided in Law No. 15/2016, dated 10.03.2016 "*On the prevention and fight of infections and infectious diseases*" ("Law 15/2016") is not hindered and/or limited by the provisions of the Law on Personal Data Protection.

Therefore, events such as the spread of COVID-19, which pose serious health and life-threatening threats to citizens, require special control measures or coordinated tracing of contacts to identify persons who may be infected or at risk of infection.

The Commissioner's Office considers that the authorities in charge of taking measures in the context of epidemiological surveillance in the fight against COVID-19 are legally authorized to process personal data and, in particular, those related to the health of individuals.

The processing includes, among others, collecting the necessary data regarding the implementation of epidemiological surveillance, storage of this data in accordance with the applicable legal deadlines, their exchange and transmission between the authorities in question and other public and private controllers, etc.

Also, in the framework of measures against the global pandemic caused by COVID-19, authorities engaged in the fight against COVID-19 may have as mandatory or necessary the international data transfer to various countries and/or international organizations, for statistical purposes, scientific and/or for their more specialized analysis purposes.

In this context, the Commissioner's Office provides that the above-mentioned controllers should act in accordance with the provisions of the Law on Personal Data Protection, which regulate and discipline the international transfer of personal data.

Personal data processing actions for the purposes referred to herein shall not constitute a cause for restriction of the individuals' right to the protection of their personal data, as provided for in the legislation on the protection of personal data. As mentioned above, even in this case are applied the provisions of the Law on Personal Data Protection, as well as the bylaws of the Commissioner.

Furthermore, it is worth noting that the anonymization of data, as a measure for the protection of privacy, in the context of epidemiological surveillance, does not automatically lead to restriction of the right to personal data protection, on the excuse that this right prevents or does not comply with the purpose of epidemiological surveillance. Anonymous data are also expressly regulated in the Law on Personal Data Protection.



Data processing in the education sector

As is already known, due to anti COVID-19 measures, pre-university and university education institutions have not interrupted the teaching process, but have continued it through online platforms, in which are processed personal data (including recorded images) of pupils, students and pedagogical staff of educational institutions.

In this regard, the Commissioner's Office considers that in the use and administration of online platforms, which provide technical solutions that aim to ensure the continuity of educational activity, *it is preferable to select standard configurations oriented towards personal data protection, in order to avoid as much as possible the possibility of violating the rights of data subjects (pupils, students, pedagogical staff).*

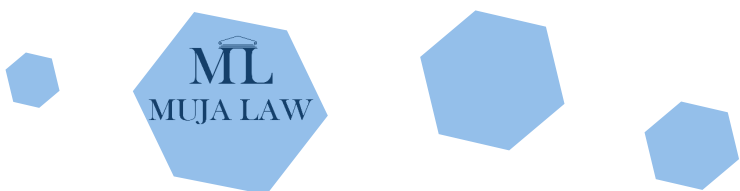
Even in this case it is extremely important to avoid processing personal data beyond the quantity and/or quality required to achieve the goal of ensuring educational continuity, in accordance with the Law on Personal Data Protection.

In addition, an essential importance in this aspect, has also the selection of the legal criterion for data processing of the relevant data subjects.

Particularly important in this regard is the case of children, for whom the Commissioner's Office strongly recommends obtaining parental or legal approval of the child in connection with the processing of data in the context of online teaching.

The above obligation must be further accompanied by the fully transparent (and, possibly, exhaustive) information of the parents or legal guardians regarding the aspects of the processing of the children's data, pursuant to the provisions of the Law on the Protection of Personal Data.

As in all other cases treated in this Guideline, the Commissioner's Office emphasizes that data processing in the education sector, in terms of social distancing imposed by anti COVID-19 measures, must be carried out in accordance with the provisions of the applicable legislation in the field of personal data protection and sectoral legislation.



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