



Section 2. Legal studies

DOI: 10.29013/EJHSS-23-5-9-16



LOCAL FINANCES IN THE REPUBLIC OF ALBANIA, LOCAL TAXES AS PART OF THEM

*Bicoku Arnaldo*¹

¹ PhD student of Department of Public Law, St. Cyril and
St. Methodius University, Veliko Turnovo, Bulgaria

Cite: *Bicoku Arnaldo. (2023). Local Finances in the Republic of Albania, Local Taxes as Part of Them. European Journal of Humanities and Social Sciences 2023, No 5. <https://doi.org/10.29013/EJHSS-23-5-9-16>*

Abstract

This article talks about local finances in the Republic of Albania. Fiscal decentralization is one of the main aspects of showing the independence of the local government from the central government. The focus of the work has been the analysis of the three main laws that include local finances, such as Law no. 139/2015 “On Local Self-Government”, Law no. 68/2017 “On Local Finances” and Law no. 9632/2006 “On Local Taxes”, amended. In the rest of the paper, are discussed the principles on the basis of which operate local finances and the relationship between the central and local governments regarding local finances. The main part of the work is focused on the analysis of local taxes as one of the sources of income of local finances and the categories of these taxes. Based on the reports provided by the website financatvendore.al have been drawn the relevant conclusions regarding each of the local taxes and the impact they have on the local budget.

Keywords: *local government, central government, local finance, decentralization, local taxes.*

In the Constitution of the Republic of Albania in its article 13 it is provided that: “Local government is established based on the principle of decentralization of power and is exercised according to the principle of local autonomy”.

Decentralization is a process where authority and responsibility for certain functions is transferred from the central government to local government units. At the foundation of decentralization is the principle of subsidiar-

ity, according to which “the exercise of public responsibilities should, in general, belong more to the authorities closest to the citizens.” Decentralization has its own dimensions, political, administrative and financial, which interact with each other and essentially represent the three components of power. Financial decentralization refers to the transfer of financial power to the local level, in order to equip it with greater authority in the administration of revenues and expenditures.

Legal Basis

Law no. 68/2017 on Local Finances approved in 2017 was one of the greatest achievements of the Albanian government in relation to fiscal decentralization. The above-mentioned law defines the principles, rules and procedures of financing local government units, including own revenues from local taxes and fees, shared taxes, transfers from the state budget, and other revenues provided for by law. The purpose of this law was to guarantee the transparency and predictability of transfers from the central government to the local self-government units, to ensure the sufficiency of the financial resources available to the local self-government units, as well as to guarantee the fiscal autonomy of the local self-government units, through the right to collect taxes and local fees. In accordance with fiscal decentralization and fiscal autonomy, local self-government units are guaranteed the right to generate their own income independently, in accordance with the laws and legal acts in force. Also, each unit has the right to receive unconditional transfers from the State Budget, which is allocated according to the criteria defined in the law. The dominant principle of the reform of decentralization and fiscal autonomy is the right of units to benefit from the distribution of income from national taxes, which are divided according to the criteria defined in the law and have full autonomy in their use. The central bodies, in delegating the functions or powers of the local government unit, should always make available to the local units the necessary tools and financial resources for their exercise. In this way, the right to delegate the function will be considered complete and in accordance with the law and by-laws.

Also in Law 139/2015 on Local Self-Government are defined the principles of the operation of local finances, the types of sources of income that local units have, expenses, the local budget and its characteristics, as well as internal and external audit as control mechanisms on local self-government units. Other laws that reflect the principle of financial decentralization are: Laws on the "State Budget", which are approved every year and part of which is the local budget for each year, Law no. 9632/2006 on "Local Taxes",

amended, Law no. 9896/2008 on "Domestic Borrowing".

Basic principles of local government finance

Local self-government in the Republic of Albania ensures effective, efficient governance at a level as close as possible to citizens through legal financial resources. The legal framework, starting with the Law on Local Self-Government, sanctions the main principles regarding the financing of local government. The main focus is on the relationship between central and local government. In this relationship, is provided for the obligation of the former to guarantee the financial sufficiency of the local units. In the creation of national policies, this power must guarantee that the revenues that will be transferred to the local government are in accordance with the fulfillment of their interests. The criterion of sufficiency or necessity is also defined in the case of delegation of functions or powers to local units. According to this principle, every delegation of functions must be accompanied by the necessary financial means for their realization.

Furthermore, the other principles reflect the separation of powers, between central and local, where is provided for the right of local units to generate income independently, the right to secure income from taxes, fees, and other local income and the right to draft, approve, implement and administer its own budget every year in accordance with the legislation in force. Another principle that is mentioned in the law is the obligation of the central government to take measures if the changes it implements in the fiscal policy bring negative consequences for local finances. According to this principle, it is provided that: *"In the event that the changes in the fiscal policy are accompanied by a decrease in the levels, rates and base of local taxes or the share of the income of the local government units from the allocated taxes, the Ministry of Finance is obliged to take measures to compensate for the decrease local units, through increased financial transfers and opportunities for local borrowing and/or other forms"*. According to this principle, not only the obligation to take measures is provided for, but also are specifically defined

the types of measures to compensate the reduction, such as the increase in financial transfers, the possibility of local borrowing or other forms. The goal of the legislator was the real guarantee, predicting that in order to compensate the loss, are necessary only those measures that are really effective and that fully compensate the negative consequences created.

Almost the same principles are provided for in the special law on Local Finances, with the only change being the addition of some additional guarantees for local finances. According to article 4, point 5, the obligation for consultation with local units is foreseen in the case of proposals of the central government for changes in the legislation, which may lead to the reduction of local income or the transfer of powers or functions to the local level.

Also, point 6 of this law, which is similar to point 5 of the law on local self-government, provides for the measures that must be taken in case local taxes are reduced by the actions of the central government. At this point, the measures that are determined are: the increase of the unconditional transfer, separate taxes, the transfer to the local level of another tax or their combination.

Sources of local government's own income

In the law on local self-government as well as the specific law on local finances, are provided for sources of income of local units. According to these laws, local units have their own sources of income, as well as other income derived from national sources. By own sources of income we will understand the income derived from local taxes and local fees, separate taxes and income from other activities of the municipalities. The focus of this work will be on local taxes and their types.

“Tax” is a mandatory and non-refundable payment to the State Budget or in the budget of local government bodies, established by law and paid from any person who benefits from a public service in the territory of the Republic of Albania (Law no. 68/2017 on Local Finances) while “Fee” is the payment made for receiving a specific service such as fees for obtaining a driver's license, for obtaining a passport, etc. As we noticed from

the definition, the “fee” differs from the tax because it is made for receiving a certain service, not a service anyway, that is, a service that the individual requires.

The revenues derived from local taxes are:

- a) tax on real estate, which includes taxes on buildings, taxes on agricultural land and taxes on land, as well as on transactions carried out with them;
- b) infrastructure impact tax from new constructions;
- c) local tax on hotel service activity;
- d) table tax;
- e) temporary local taxes, which are imposed in accordance with the law;
- f) local tax on the economic activity of small business;
- g) local tax on personal income, tax on income generated by gifts, inheritances, wills or local lotteries;
- h) other taxes, defined by law (Law 139/2015).

When the municipal council deems it necessary, it imposes taxes of a temporary nature, in the general interest of the community, in the territory within its jurisdiction. The basis for calculating the provisional tax for each taxpayer is the tax value of the taxpayer's real estate in the territory of the local self-government unit. The level of the provisional tax cannot be higher than 35 percent of the taxpayer's real estate tax base. The temporary tax cannot be applied for more than three years from the entry into force. Municipalities can collect fees for public services. Local fee is a payment that an individual, natural or legal person makes in exchange for a specific service received, specific public good used or right granted by the local self-government unit. Fees should be oriented towards covering the cost of services provided, the consumption of which is measurable. The main fees are related to the occupation of public space, garbage collection and disposal, water supply and sewerage, irrigation and drainage, licenses and permits and authorizations.

Other sources of income in the municipality are:

- income from leasing assets owned by the municipality;
- income from capital investments;
- income from titles and other rights purchased by the municipality;

- income from the profit of publicly owned enterprises;
- revenues from private-public partnerships (Law 139/2015).

In the law on local self-government, article 35, points 2, 3 and 4 give us a clear overview of the autonomy of local bodies regarding local taxes. However, we cannot talk about a full autonomy according to this law, because this space of autonomy is limited by the specific law for local finances. More specifically, point two of Article 35 states: “Municipalities exercise the right to set the tax level, the method of its calculation, as well as their collection and administration **within the limits and according to the criteria defined in the relevant law**”. The same restriction is provided in point three where it is defined: “Municipalities have the right to exclude certain categories or groups in need from paying the tax, **in accordance with the relevant law**”. Point 4 of Article 35 contains the same provision as the above points. It defines a harmonization of the law on local self-government with the specific law on local taxes. At this point it is defined:

*“4. The basis of local taxes, as well as their maximum and/or minimum limits are established by a separate law. Local self-government units have the right to apply or not a local tax. When these units apply the local tax, they exercise the right to set their level, the manner of their collection and administration, **according to the criteria and limits defined in the relevant legislation**”.*

From the second sentence of the point 4, the legislator using the phrase “they have the right”, let us understand that even though there is a legal provision for local taxes, local units do not have the obligation to implement it. At this moment, their autonomy to decide is complete, since their choice is not conditioned by any other factor except the evaluation they make of the local tax. Then, if the local units decide to implement the local tax, at this moment we cannot talk about full autonomy since the third sentence of point 4 expressly determines that the municipalities can set a level of taxes according to their assessment, but the latter must be in accordance with the criteria and limits defined in the relevant legislation.

The Law on Local Self-Government, as well as the Law on Local Finances regarding local taxes, refer to the specific law, which is Law No. 9632 dated 30.10.2006 “On the Local Tax System” as amended. This law defines the rules for the exercise of rights and duties by local government bodies, for the establishment of local taxes, their collection and administration. Regarding the types of local taxes, the categories are the same as those provided for in the law on local finances. The first tax that is foreseen is the simplified tax on small business. The applicable tax rate on taxable profit for taxpayers subject to simplified tax on small business profit, with annual turnover from 0 (zero) to 8 (eight) million ALL, is 0 (zero). Regarding the administration of this tax, the law on local taxes provides that the Central Tax Administration transfers the income from the simplified tax on small business to the accounts of the municipalities, where the taxable business is located, within the 10th of the following month, when they are collected. The Central Tax Administration receives a commission for the service it performs. This commission is calculated as a percentage of the amount of tax collected and transferred to the budget of the local government units, which is 1 percent and is paid to the account of the Central Tax Administration. The commission goes to the account of the State Budget, based on the legislation in force on the use of secondary income, created in budgetary institutions and for covering the costs of “Tax Stamps”.

Among the most important taxes is the real estate tax and the infrastructure impact tax. All natural or legal persons, local or foreign, owners or users of the above assets, in the territory of the Republic of Albania, regardless of the level of use of these assets, are subject to the real estate tax. Exceptions are made in cases where the law provides otherwise. The liability for the real estate tax is, as the case may be, the owner or co-owner, according to the part he owns, or the user of the real estate, for assets that are not equipped with ownership documents.

Real estate taxes include:

- a) taxes on buildings;
- b) tax on agricultural land;
- c) land tax.

The basis of the tax on the building is the value of the building, which is calculated in accordance with the methodology and procedures determined by the decision of the Council of Ministers. According to the law on local taxes, the tax rate, which is applied as a percentage of the tax base, is 0.05% for a building that is used for residential purposes, 0.2% for a building that is used for economic activity, 30% of the corresponding tax rate for the entire construction area, for which the developer has been provided with a construction permit and has not managed to complete it according to the deadline defined in the act of approving the request for a construction permit. In contrast to the simplified income tax administered by the central tax administration, the real estate tax is administered by the local self-government unit for buildings under its jurisdiction. Also regarding the income obtained from this tax, we emphasize that all income is paid to the account of the relevant budget of the local self-government unit, in whose territory the property is located, and is used in accordance with the law "On the finances of local self-government in Republic of Albania".

Even in relation to the agricultural tax, the earned income is paid to the budget of the municipality where the real estate is located. The tax base is the area of agricultural land, in hectares, owned and used by the taxpayer. The surface of the owned land is determined according to the documents certifying it. Regarding the relationship between the central and local governments regarding this tax, the law determines that the minimum categories of agricultural land are given in Annex 1 that is connected to this law. The space allowed to the municipal council is the possibility to approve sub-categorizations for each minimum category of agricultural land. The same provisions as the agricultural tax are also determined for the tax on the land, where the basis of this tax is the area of the land in square meters owned or used by the taxpayer.

Regarding the infrastructure impact tax, the law defines different tax levels depending on the investment that will be made and the purpose for which this investment will be used. In the case of constructions intended for residential purposes or for trading and service units, which are carried out by a con-

struction company, the rate of the infrastructure impact tax is in the amount of 4 (four) percent to 8 (eight) percent of the sales price per square meter. This category of investments also includes replacement constructions for residential purposes, conditioned to be built as a result of the implementation of a concessionary contract, which affects existing buildings. Also, this category also includes constructions intended for commercial or business centers. The tax base is the value in Lek (Albanian Currency) per square meter of the sale price of buildings for residential purposes or of trading and service units. Regarding the sale prices, the law determines that it is based on the reference value of the market value, according to the definitions issued by the act of the council of ministers.

Paying attention to the new construction and the fact that it can be used in the public sector, such as tourism, industry or agriculture or for public purposes, the law has defined a lower rate of this tax, at the rate of one to three percent of the investment value.

For larger projects in the public sphere, with a much greater impact than the above projects, the law has provided for an even lower value of the infrastructure impact tax. Normally, this is an incentive to encourage such projects which will serve public purposes, facilitating them on the other hand with tax relief. Specifically, this tax is determined at the rate of 0.1 percent of the investment value, but not less than the cost of rehabilitation of the damaged infrastructure, when this cost is not included in the investment estimate. The most important projects will be those for the construction of national roads, ports, airports, tunnels, dams, energy infrastructure construction, including machinery and equipment for these projects. The other two categories defined by the law are not only related to the purpose for which the investment will be used, but also related to other criteria. In point c of article 27 of the law on local taxes, the law has determined that for buildings that are in the legalization process, the tax rate will be 0.5 percent of the investment value. So the current status of the building on which it will be invested is used as a criterion. Meanwhile, point d of the law determines as a criterion the location of the building and the purpose for which it

is being built. This point determines that for buildings intended for residential purposes in mountainous areas, the infrastructure impact tax is 0 to 3 percent of the investment value. The Municipal Council determines by decision the mountainous areas for the effect of the implementation of this paragraph.

Regardless of the different levels of the tax, the law has also provided for exemptions from the payment of this tax. The following which benefit from these exceptions are:

- investments made for the construction of accommodation structures “Hotel/Resort with five stars, special status”, according to the definition in the legislation in the field of tourism and which are holders of a registered and internationally recognized trademark “brand name”;
- investments of subjects, which develop hosting activities certified as “agritourism”, according to the legislation in force in the field of tourism;
- investments for the reconstruction, repair or restoration of buildings-damaged as a result of natural disasters, according to the definition given in the legislation in force for civil protection;
- investments within the reconstruction programs, according to the provisions of the law, for coping with the consequences of the natural disaster.

According to the report carried out in 2023, published by the website financatvendore.al, it results that the income from local sources (about 7.2 billion ALL) decreased during 2023T1 by about 16% compared to the same period a year ago. The negative performance in revenues from local sources was largely determined by the decrease of local tax revenues. Revenues from local taxes reached a level of about 3 billion ALL, decreasing by about 49% in annual terms. If we exclude from the total income from local taxes those collected by the municipality of Tirana, the income from this category (for the other 60 municipalities) turns out to have decreased by about 22% in annual terms. The negative performance in local tax revenue is led by the decline in infrastructure impact tax revenue from new construction, followed by real estate tax. Together, these two tax-

es represent about 88% of the total revenue from local taxes in the period under analysis. Revenues from the infrastructure impact tax from new constructions (TNI) reached a level of about 1.6 billion ALL, decreasing by about 63% in annual terms. Income from taxes on real estate recorded a value of about 996 million ALL, decreasing by about 4% in annual terms. The main weight and contribution to the income from the tax on real estate is given by the income from the tax on the building (72%), which recorded a slight annual increase in the period under analysis.

Based on this website, was made the study of the income generated according to the funding sources for 2023. If we take as a source of funding the municipalities' own local resources, we will notice that most of the income is obtained from unconditional transfers of which are sent by the central government with 54.15%. Next comes the income from local taxes with 17.26% and the income from local fees with 16.33%, passing after other local incomes which are divided between them, occupying a small percentage. If we take the income from taxes and local fees as a source of financing, we will notice that the largest part of the income from taxes consists of the infrastructure impact tax with 28.10% and the building tax with 12.43%. Other taxes, such as the hotel tax, property transfer tax on real estate, land tax, agricultural land tax, signboard and advertising tax, occupy a very small percentage compared to the above two taxes. What is worth emphasizing is the large space occupied by local fees as a very important source for generating income. Specifically, fees for administrative services make up 23.26% of local revenues, fees for local public services (waste, greening, etc.) make up 17.87% of revenues.

Guarantees given to the local government regarding local finances

In terms of decentralization, the relationship between central and local government is also reflected in other articles of the law, especially with regard to local finances, where in article 34 point 5 is provided for: “*In case changes in the fiscal policy are accompanied by a decrease in the levels, rates and base of local taxes or the share of the income of local government units from separate tax-*

es, the Ministry of Finance is obliged to take measures to compensate for the decrease, through increased financial transfers and the possibility of local borrowing and/or other forms". In addition, in the Law "On the Finances of Local Self-Government", is made a detailed prediction by providing in Article 4/6: "In case local taxes or fees are reduced or removed from the central government, self-government units local are fully compensated, through the increase of the unconditional transfer, separate taxes, the transfer to the local level of another national tax or their combination". This article clearly reflects the line of decentralization in its two forms, jurisdictional and financial. What this means is, first, a guarantee for the local government that interventions by the central government in fiscal and budget policies must be accompanied, in advance, by a consultation and compensatory measures for the local government, in case they have a negative impact on local finances and the legal guarantee that the establishment and change of local taxes and fees belongs to local decision-making, i.e. the Municipal Council. The Law "On Local Self-Government" also gives a preliminary guarantee to the local government, obliging the central government to consult with the local self-government units during the drafting of the state budget, through the defined consultation instruments, analyzing the sufficiency and stability of the financial resources of the local self-government unit to achieve the goals defined in this law. But this consultation, in the case of changes in the building tax, turns out to be not real and not in accordance with the spirit of the law and its purpose. The consultation of the central government with the local government is an expression of local autonomy and if we see this article also related to other provisions, we conclude that the law in this aspect is not being applied.

Another financial guarantee for municipalities consists in the fact that unconditional transfer cannot be smaller than that of the previous year. But the fact that the budget of the local units in total does not show a significant increase, it is a clear indicator that the autonomy is not complete and that the new legislation has not brought an increase in the budget of the municipalities, i.e. the

essence of decentralization. The level is more or less the same, i.e. no less than 1% of GDP is allocated from the central budget, which is the lowest regional level, thus preventing municipalities from increasing the quality of services and exercising new powers in full discretion, as provided for in the European Charter of Local Autonomy. Apparently, there is an inconsistency between objectives of the territorial reform and fiscal and budgetary policies of the government, thus undermining the strengthening of decentralization and fiscal autonomy of municipalities.

Conclusions

Local taxes are a very important source of income for local units. In order for the revenues to be realized completely and realistically in the local budget, a great effort on the part of the local actors is needed to make this possible. First, efforts should be made to inform citizens about local taxes, their types and their obligation to pay local taxes. Citizens should be informed and be aware that this payment is translated into better service for them in the future. On the other hand, the employees of the respective municipalities must correctly fulfill their duties for the collection of local taxes as are defined in relevant laws. Thirdly, we must have a real contribution from both central and local actors to respect the constitutional principle of decentralization and local autonomy. The Law "On Local Self-Government" and the Law "On Finances of Local Self-Government" do not reflect one of the important principles of the European Charter of Local Autonomy that the central government should support local decision-making and not simply finance through a specific fund a task, for which the local government does not exercise decision-making. If the transfer of a social function or another to the local level means more income, but reduces the decision-making of the local government on expenses, then the local government will become a subordinate of central government so we will have a centralization of local income in function of central decision-making.

In this perspective, with a correct treatment of local government bodies as independent bodies and governing partners, funding from the state budget would not

only be an attribute of the executive at the central level, but a fundamental right of local government bodies, as constitutional bodies which, with the necessary financial resources, can exercise the functions defined by law.

References

Constitution of the Republic of Albania.

Law no. 68/2017 on Local Finances.

Law 139/2015. "On Local Self-Government". Article 35, 36.

Law No. 9632 dated 30.10.2006. "On the Local Tax System" as amended Financatvendore.al

submitted 22.08.2023;
accepted for publication 20.09.2023;
published 8.10.2023
© Bicoku Arnaldo
Contact: bicokuarnaldo@yahoo.com