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Inconsistencies in the tax legislation in Kosovo

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Inconsistencies in the Tax Legislation in Kosovo

A Honors Society Project
Presented to
The Academic Faculty

By
Rineta HOXHA

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Inconsistencies in the Tax Legislation in Kosovo

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Abbreviations

CIT – Corporate Income Tax
MED- Ministry of Economic Development
MEF - The Ministry of Economy and Finance
MF- Ministry of Finance
PIT – Personal Income Tax
RT- Republic of Taxastan
TAK – Tax Administration of Kosovo
TAP – Tax Administration and Procedures
UNMIK – United Nation Mission in Kosovo
VAT – Value Added Tax
WHT - Withholding Tax
I. Abstract

The objective of this work is to identify inconsistencies in the tax legislation in Kosovo and recommend solutions towards more comprehensive and user friendly laws for taxpayers, tax professionals and tax administrators.

A crucial element of the tax legislation is its consistency. Tax laws need to be in accordance with each other as they are the building blocks of the same system – the tax system. Unfortunately, analysis on the tax laws in Kosovo resulted in identification of a number of inconsistencies that affect negatively the comprehensiveness, simplicity and the functionality of the laws. Moreover, interviews conducted with different stakeholders on the issue, namely businesses, tax officials, tax professionals and academicians reveal that in practice also these inconsistencies are noticed and interrupt the functionality of the legislation.

The main issues identified are related with inconsistent structure of the laws in comparison with each other, inconsistent articles and paragraphs inside each law, missing components and unclear definitions, and also procedures and penalties regulated by the laws. Based on the findings and with the aim of improving the condition in which these laws currently are, the paper provides a list of recommendations technically feasible and exceptionally relevant.
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II. Statement of the Problem

The role of government in the state has changed drastically during the past century. Whereas in the beginning of 1900s, many governments, following the theory of Adam Smith of minimum intervention by the state, concentrated usually in the area of defense, national security, property protection, justice and major public projects; after Great Depression, the theory of Keynes was actualized and the level of government intervention has since increased.\(^1\) Consequently, the means of financing this higher degree of intervention have had to increase and led to high tax levels- levels that were not even imagined as reachable back in the time of Smith.\(^2\) Taking that into consideration, it is logical to assume that as the governments became greater, the importance of taxes increased accordingly. Therefore, the proper and good legislation of taxes is essential if the aim of a government is to build a country strong on the economic and financial aspect.

A good tax law sets the foundation for a strong tax and financial system. That being said, it is relevant to discuss what factors make such a law. In general, a good law is a law that possesses characteristics such as: consistency, functionality, fairness, and understandability.\(^3\) More specifically, a tax law should be consistent in its structure and in relation with other tax or non-tax laws; address the needs of the business environment which it regulates by also considering the culture in which it functions; be fair in treating all the taxpayers equally\(^4\) and also be simple enough to be understood by taxpayers of different backgrounds. As such, it is crucial for a state to invest in preparing and approving a tax legislation that is inclusive of the aforementioned attributes. Kosovo’s tax legislation lacks some of these important traits. Inconsistencies of many kinds, starting from the technical and structural to the logical and contextual, are present. Common sense suggests that if there are issues in the foundations, the system is a subject to fail. As such, the issues that inconsistencies present in the tax legislation may lead to a wide range of issues on the financial system as a whole.

This work analyzes the current tax legislation in Kosovo with the sole aim of identifying the existing inconsistencies, either structural or logical. In a wider spectrum, the purpose of the

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\(^1\) Vito Tanzi The Economic Role Of The State In The 21st Century, p. 617-618
\(^2\) Ibid.
\(^3\) Thuronyi, V. (1996). Drafting tax legislation. para.7
\(^4\) Vanistendael, F. (1996). Legal framework for taxation. pg.5
paper would be to explore the possibilities for improvement: restructuring, adding necessary traits and/or removing inconsistent sections of it. This action would ensure the simplicity and effectiveness of the legislation making it more understandable and appropriate for every taxpayer, tax professional and tax administrator.

III. Background Information

In the process of state creation, a major challenge and focus was the foundation of state institutions and, as a crucial complementary component, the building of the legal infrastructure of Kosovo. This challenge, however, is to be considered as a fortunate chance of being able to carefully project and construct the state from the roots in such a manner that it would best fit the circumstances in the country. In Kosovo, the system of taxes, including the responsible institutions and legislation, has been given its form after 1999. The main institution in the system is The Ministry of Finance (MF) which until the Parliamentary Elections of 2010 operated jointly with the Ministry of Economic Development (MED) under the name The Ministry of Economy and Finance (MEF). This separation means that there is now a designated institution with the sole mission of developing the field of finances in Kosovo. The MF has under its umbrella different agencies that have the duty of executing the policies formulated in the political instances. The relevant agency is the Tax Administration of Kosovo (TAK), which was founded in 2000 and initially led by the UNMIK administrators. During the following two years, the lead of this agency was performed jointly by local and international directors until 2003 when the competences were passed to the MEF and a local director. The obligation by law of this agency is to collect taxes by providing uniform application of legal provisions for all taxpayers, in the same way for the similar situations.

Similarly, the tax legislation, and thus the tax system of Kosovo, was designed from the beginning and is still in the process of developing. Its base was “the first legislative act on the

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5 Ministry of Finance. (n.d.). Ministria. para.1
6 Tax Administration of Kosovo. (2011). Our history. para.1
7 Ibid.
8 Ibid.
UNMIK Regulation on Tax Administration and Procedures which entered into force in 2000.”

Recommended by international advisors and focused on simplicity and applicability, the tax system consists of three main taxes, namely value added tax (VAT), personal income tax (PIT), and corporate income tax (CIT). Four other important taxes are excise tax, custom duties, withholding tax (WHT) and local taxes; however, these will be subject to another study. An important aspect of the taxes is that they are collected by two agencies, the Customs of Kosovo and the Tax Administration of Kosovo. The first one collects the custom duty at the borders, excise tax and a portion of VAT. These are called external taxes and generated a total amount of 827,704,000EUR for Kosovo’s Budget of 2011. The other taxes, Corporate Income Tax, Personal Income Tax and the other portion of the VAT, are collected internally by the Tax Administration of Kosovo, and called internal taxes. The total amount these brought to the Budget of 2011 was 261,134,000EUR.

Among the three tax types that will be subject to this study, the most important one is the value added tax and that due to the revenues it generates for the government. VAT was initially set at 15% and increased later to 16%. The rate of this tax is fixed and levied on domestic and international goods and services. A portion of it is collected at the borders and makes up 51% of the tax revenues collected by the Customs of Kosovo, whereas 47% of revenues originate from the internal collection of VAT. The personal income tax is a progressive tax initially levied only on wages; nevertheless, it expanded later to be imposed on all other sources of the income that increase the net wealth of the receiver, such as on dividends, interest, rents, lottery gains and the like. Originally, it was structured with 0%, 5%, 10% and 20% rates; however, the rates have been reviewed and reduced to 0%, 4%, 8% and 10% respectively. The presumptive tax was a provisional tax to generate revenues from the newly formed and yet unstructured businesses of the post-war years so the taxes were levied in an assumed profit rather than an actual one. Gradually and together with the profit tax, the presumptive tax was integrated in the

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12 Ibid. p.13
17 Refer to Appendix I, Table 1. Tax Rates on Personal Income
third type of the tax discussed here- the corporate income tax. This tax is imposed on corporations generating more than 50,000 Euro annual profit and its rate has been determined as 10% on net income. This is applicable for all corporations operating in Kosovo.

The Tax Administration of Kosovo operates based on the tax legislation which in total contains four main laws listed below:

1. The Law on Tax Administration and Procedures – Law No. 03/L-222
2. The Law on Value Added Tax – Law No. 03/L-146
3. The Law on Personal Income Tax – Law No. 03/L-161
4. The Law on Corporate Income Tax - Law No. 03/L-162

While these are some of the most important tax laws ruling in the territory of Kosovo, they are not the only ones and as a result the number of laws making the tax legislation is larger. Moreover, each of the laws has its administrative guidelines, sub-legal acts and regulation of procedures that make up for massive tax legislation. In the online list of laws one can notice a number of documents published under the same title. This is related to the history of the development of the tax legislation after 1999 which began with the UNMIK regulations or provisional laws, developed and converted into tax laws which further changed to new, updated laws. In the same list, a number of amendments are also found. In the first place, identifying which are the laws that dominate over others is not an easy task. Further, the laws in Kosovo are published in three different languages: Albanian, English and Serbian. The work of translators in this case plays an important role in the consistency of the laws. That said, inside the laws, although often changed and upgraded, are a number of inconsistencies that could be identified through qualitative analysis.

At first sight, it is evident that the major inconsistencies between the laws and inside each law are those related to the structure. Although building blocks of the same object – the tax system in Kosovo- the laws are not consistent with a unique format. The same is true for the

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19 See Appendix I and Appendix II, Table 1 For Tax Rates and their contribution in the total revenue
20 Ministry of Finance. (n.d.).
21 Assembly of Kosovo Web Laws
structure of the articles inside each law which do not follow a certain order either. Additionally, in many cases, different laws define the same concepts differently while the provisions for penalties punishing the same noncompliance do conflict each other. These and similar inconsistencies present in the format of the tax legislation, need appropriate revision and improvement.

IV. Literature Review

This section of the paper aims to give insights on the work and reports of different scholars on tax legislation conducted up to date. The topics are mostly related with the techniques and processes followed when drafting a good and consistent tax law and with the principles that need to be kept in mind when building the tax legislation and determining the proper structure and length that a tax law should have. A report on tax legislation of the United Kingdom is also discussed followed by a study conducted on Kosovo’s tax system in 2007.

A relevant work of Victor Thuronyi, “Drafting Tax Legislation”, lists and discusses several techniques that help the adequate drafting of the tax legislation. Pointing out the importance of having a well-drafted legislation, the author claims that an effective tax law needs to be composed of “meaningful words [and should be] intelligible, well thought out, and well organized.”\(^{22}\) The author claims that in most of the developing countries, the drafting of tax legislation is not conducted by drafting specialists but tax officials in the ministry of finance or tax administration agencies who are often advised by international experts also unspecialized in how drafting is prepared. As such, the author aims to offer some of the techniques deemed necessary for a well-prepared tax law by specialists in drafting.

The article explains a set of criteria that a well-prepared law should possess: “understandability, organization, effectiveness, and integration.”\(^{23}\) Each section of the paper describes the importance of each of the criteria and to what extent these contribute to a law that is considered good, simple and consistent. According to the author, all these four criteria

\(^{22}\) Thuronyi, V. (1996). Drafting tax legislation. para.4

\(^{23}\) Ibid. para.7
interrelate and are complementary to each other. Therefore, a well organized law is more easily understood by the readers and if there is no confusion, this is a contribution to the effectiveness.

A similar work of Richard K. Gordon and Victor Thuronyi, “Tax Legislative Process”, discusses the fundamentals of an effective process in preparing the tax legislation with a focus on the developing states.\(^{24}\) A similar process is suitable to the reforming of tax laws as well. According to the authors, the process during which a tax law is drafted or changed is as important as its essence in determining the “quality, effectiveness and acceptability.”\(^{25}\) In the process described in this scholarly work, the lead in the process belongs to the Ministry of Finance; however, the important role that a close consultation and collaboration with the parliamentary committees and private sector plays in the process is highly emphasized. What the authors propose is that the Ministry of Finance creates a review committee that is not only in charge of the initial drafting process but also for the review and adaptation of the laws accordingly with the changes and problems that may arise in the economy. Here the authors point out that in order to address the goal of the simplicity and understandability of laws, frequent changes are not desired.

For a process to be adequate, there are a few steps that need to be involved. One of them is the research that is mostly conducted by estimating revenues, using surveys that tend to identify the current practices, and comparing the tax laws of another country. None of these procedures is easy; nonetheless, they are of particular relevance in the process of drafting a functional law. The authors also put emphasis in tackling the interdisciplinary nature of the tax legislation. To tackle this, the drafting team should involve economists, tax law experts, tax administrators, accountants and people of different professions who are usually influenced by these laws. Other governmental institutions, such as Ministry of Justice, play an important role in the process of designing and drafting the tax laws so their involvement in the early phases is recommended by the authors. Although the collaboration with different parties is seen as essential, the level of this collaboration should be carefully decided since different parties have different interests which try to promote, the authors point out. That said, a continuous consultation between all groups that prepare different provisions of the laws should be maintained to ensure the coherence of the law.

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\(^{24}\) The following three paragraphs are based on Gordon, R., & Thuronyi, V. (1996). Tax legislative process.

\(^{25}\) Ibid. pg 1
This work also dedicates a section to the role of foreign advisers in the preparation of the tax laws and also lists some of the issues that may arise due to their involvement. In general, their role should be to suggest changes and give comments on the draft of the tax laws, but their role cannot be decisive in any way. The final decision belongs to the local experts, the authors claim.

Legal Framework for Taxation, a work of Frans Vanistendael, discusses the general principles which should provide for the basis of a tax law and that together with other provisions build the legal limitations to the tax legislation. The base of the Vanistendael’s framework are that “(1) a tax can be levied only if a statute lawfully enacted so provides, (2) a tax must be applied impartially, and (3) revenues raised by a tax can be used only for lawful public purposes, not for the prince’s private ends.” Moreover, the provisions that make for the legal limitations come from the constitution of the country and other basic principles, international agreements ratified by the country, judicial decisions on particular court cases, the laws of the country, and also its political structure. This work aims to create a legal framework that in principle is applicable to all countries but taking into consideration the differences that may be imposed based on the structure of a particular country.

Each section of this scholarly work treats a particular principle, explaining and discussing the perception and understandability of that principle in different countries of the world. The first principle discussed is that any tax must have a strong foundation in law which, in other words, means that no tax is levied if this is not authorized by the law. Usually, this principle is found in constitutions of different countries and is usually interrelated with other principles, such as that of equality. The latter is then discussed in the second section of Vanistendael’s work. The principle of equality procedurally means that no tax payers can be treated differently, positively or negatively, from other tax payers; while substantively it means that citizens in different circumstances are allowed to be treated accordingly. Other principles include Fair Play of Public Trust in Tax Administration which prohibits unfairly advantage or disadvantage of taxpayers; Proportionality and Ability to Pay, which means that the taxpayers pay proportional to their income; Non- retroactivity meaning that it is unfair to treat the investments of the taxpayers based on a new tax that was not applicable when the economic decision was made. Additional to

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26 The following three paragraphs are based on Vanistendael, F. (1996). Legal framework for taxation
27 Ibid., pg.1
the principles, the author dedicates a part of the paper in discussing the limitations of the laws, as a result of the constitution, international agreement or Charter of the Taxpayers Rights.

Interpretation of the tax laws is another issue tackled as a relevant part of the general framework. In countries around the world, the interpretation of the tax laws by the implementers and courts is not similar. As such, the author puts a number of countries in a comparative perspective. In this respect, it is pointed out that the executive branch is usually authorized as the implementing mechanism of tax laws and it should accomplish this mission in accordance with the legislative and judiciary branch. All three have their competences in the power of making and enforcing tax laws; however, the separation of powers is a complex issue particularly in developing nations, the author claims.

According to a report on tax legislation of the United Kingdom prepared by the Tax Law Review Committee, a great issue related to the tax legislation of this country is complexity of the law itself. Analyzing the most common complaints that are addressed each year to the Chancellor by the representatives of practitioners and tax payer and also the history of development of the tax acts themselves, these authors claim that there are a number of issues related to the tax legislation in the United Kingdom. One of the issues is the volume of the acts themselves. Over the years the number of pages and the length of sections of tax laws has highly increased making it difficult for the practitioners and tax payers to comprehend. This certainly results in many uncertainties and difficulties, the authors claim, especially for the practitioners for whom it is now impossible to acquire the whole knowledge of this laws before entering professional exams. Moreover, the authors state that this is a phenomenon present in most of countries, such as Canada, where year after year the acts increase in volume. As this committee puts it, the length of these laws is determined by the changes that the government constantly makes to the tax code.

However, what is of a higher concern is that in drafting these laws a complex language was used which makes the laws difficult to be understood by the citizens who do not have a background in law. The use of specific jargon makes the law useful only to lawyers but in the case of tax laws it is important that the language used is simple enough to be comprehended by everyone else, and especially by those who have to pay the taxes. As a result of this complexity,
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taxpayers lose money every year. Another issue tackled in this report is the fact that an explanatory memoranda which would help in clarification is lacking. Such memoranda would provide explanation on the specific sections and amendments of the acts making it user friendly and reducing the number of issues raised by the complexity. The hypothesis of this report is that the tax acts in the UK are continuously becoming more complex and the fact that many complaints are addressed towards this complexity proves them right. This causes a lot of inconvenience and loss of money to the tax payers; ultimately this shows how important it is for the economy as a whole that the tax legislation be coherent, consistent and simple.

Finally, among the very little work that has been done to assess the issues present in the tax legislation of Kosovo, a work of Melinda Blair, “Tax Policy as a Mechanism to Secure Kosovo’s Independence”, seems to tackle some of the aspects of the legislation still remaining an issue. Blair, a candidate for Juris Doctor, conducted a field work during her short stay in Kosovo in 2007 and in her work she gave recommendations on the main changes that need to be applied in the tax legislation in Kosovo to address the needs of the financial and economic environment of the country. These recommendations are based on the analysis of the UNMIK regulations applicable at the time and aim to guide the reform which according to the author should take place while Kosovo works towards its independence and its tax legislation. Some of the critiques that are given in this work are related to the system of taxpayers’ complaints. This was a system integrated in the Tax Administration itself while Blair recommends that a designated court should have the mandate in assessing tax disputes.

As an important recommendation for the reforms in tax legislation, Blair considers the adaptation of a tax policy that would induce companies to invest in innovation and education as two important fields that would urge the development of the Kosovo’s economy. Additionally, she proposes a lower corporate income tax rate to make Kosovo more competitive in the region while also considering that a territorial system of taxation, as opposed by a worldwide system of taxation, would be more adequate for the country. Finally, she sees levying taxes on the personal income of internationals working in Kosovo and criminalizing tax evasion as important. All in all, this work looks at the legislation directly from the judicial and economic point of view and the recommendations are given following these principles.

29 The two following paragraphs are based on Bairl, M. (2007). Tax policy as a mechanism to secure Kosovo’s independence
V. Methodology

For the purpose of this paper, analytical and qualitative methods of research were applied to identify inconsistencies present in four laws: Law on Tax Administration and Procedures, Law on Value Added Tax, Law on Personal Income and Law on Corporate Income. Other tax laws such as Law on Excise Tax and Custom Code are important part of the legislation; however, these will be subject to another study. The decision to consider only these four laws is due mainly to the necessity to focus on a narrower subject of study in order to achieve more qualitative results for the time and resources at disposal. Additionally, these are the main laws upon which the Tax Administration of Kosovo operates and thus represent a set of laws which are interrelated to each other, also on the basis of the agency designated to execute them.30

In the majority of the scholarly work on tax legislation, the research and the scope of study was focused on aspects such as the impact of a particular legislation on the economy, judicial issues related to it or its conformity with the environment it rules. Other studies would focus on the principles, methods and techniques that should be followed when preparing tax legislation of a country. All of these works are very important in tackling different issues; however, it is difficult to find a work that tackles the structural and logical issues present in the law text themselves, which in turn is also relevant to improve those tax laws. From this perspective, this work is a pioneer in the field. This is particularly true for Kosovo where the relatively young legislation is still waiting for more studies and analysis that aim to improve it. Consequently, it was impossible to come up with the results based on the similar research conducted earlier by experts. In these conditions, it was seen as appropriate to separate the research into two different phases: The first phase consisted of thorough analysis of the laws in order to identify the inconsistencies that exist while the second phase consisted of interviewing different stakeholders in order to capture the impact that inconsistencies present in the laws have on work in practice.

To complete the first phase of the research it was necessary to first conduct secondary research and learn from the studies of various scholars on the adequate formats that the laws on

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30 Law on Tax Administration and Procedures Law No. 03/L-222
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taxation should have, the processes of law making and drafting, in general, and for developing nations and Kosovo, in particular. A number of studies were found on the topic and used as a reference to build the necessary background in recognizing the inconsistencies when encountered. This was made possible by working to build a comprehensive idea on the components that a good tax law is thought to contain according to scholars. These components include the necessary provisions, adequate structures and economic theories that one should consider when drafting a tax law. These studies constructed a good basis to begin the analytical research aiming to identify inconsistencies present in the Kosovo tax laws. Three different approaches were utilized to complete this phase of the research:

- Comparison approach between the four laws to identify structural inconsistencies between them regarding the structure of the laws, ordering of articles, structure of paragraphs and definitions of terminology
- Comparison approach between the four laws to identify logical inconsistencies between them with respect to penalties, regulations and procedures
- Analysis of each law individually to identify structural and logical inconsistencies inside the law including comprehensiveness, structure of the articles, fallacies, language and alike.

The abovementioned method has helped in identifying the main inconsistencies present in the four laws in study. Organizing the findings has required the use of a more technical approach. All the inconsistencies were listed in a table format, individually for each one of the laws. The columns served to list in them the article, paragraph and the text in which an issue was encountered while the fourth column contained description on the inconsistency. Organizing the findings in a tabular format helped the identification of major issues and building of the structure of the paper according to which each one of the issues in the tables were coded. Separate tables were created to organize the issues present in the definitions while the analysis concentrated in identifying inconsistent definitions while comparing the four laws. Unclear definitions that negatively contribute to the comprehension of the laws were also identified and included in the respective tables. Similarly, the analysis of the structure of the four laws in comparison with each other against a benchmark was conducted. The aim was to assess how much these laws remain consistent with a single structure and to the structure of each other.
In the second phase, an interview-based primary research was conducted to bring the perspectives of different stakeholders into focus. Competent individuals coming from different backgrounds and institutions such as financial, tax administration, businesses, and academics were interviewed by utilizing semi-structured interviews developed as following:

All interviewees were asked to answer the following aspects as these apply to the work of them all:

- Inconsistencies in the tax legislation that they have encountered during their work
- Consequences resulting from the inconsistencies in the tax legislation when practicing their activity
- Common misinterpretations of tax law provisions and causes leading to these misinterpretations
- Remedies available to improve the situation, from their perspective

Additionally, a set of questions that apply to their field of expertise was prepared for each of the interviewees. While other points of discussion were derived from their answers and extended the conversation behind the prepared inquires.

The set of questions prepared for the accountant followed the below guideline:

- Mention some of the troubles faced when serving clients of different economic and non-economic activities
- Discuss whether the laws and regulations of the Tax Administration are comprehensive enough as to ease the work of an accountant
- Give examples of inconsistencies identified during the work by providing information on the kind of activity the client was engaged in and state the issue and situation faced

For the business persons interviewed the inquires concentrated more in the following aspects:

- Claim whether the provisions of laws on taxes are understandable from their point of view
Tell whether they have faced issues in paying their tax dues as a consequence of the misunderstandings and/or inconsistencies of the laws and also describe in detail the issues and situations created

Argue whether their businesses lose money as a consequence of these inconsistencies

In order to become more familiarized with the perspective of the tax administrators on the issue, the questions asked to the TAK official concentrated on:

Elaborate whether the laws on which they operate every day are easy to be comprehended

Mention some of the difficulties that they face as a result of the inconsistencies on the system they use for taxes

List some of the complaints that they receive more often from the taxpayers and that come as a result of inconsistencies in the laws

Approximate the costs involved for the tax administration due to inconsistencies

Finally, the law professor opened a discussion guided by the following:

Mention some of the fallacies of the tax system, with respect to these four laws, from the legal point of view

Limitations to the Methodology

The majority of the limitations on the methodology of this research come as a consequence of the very specific scope of the study. As mentioned before, there is no similar work published by experts in the field, and as such the analysis was mostly based on the researcher’s judgment. Nevertheless, it is important to point out that this judgment was led by the works of different experts on the components and structure that a consistent tax legislation should possess, and also by the perspectives of different stakeholders in the issue that were constantly considered.

With respect to interviewees, it is important to mention that many of the answers were given in the context of fallacies that exist in the tax system whose roots are in tax legislation but have to do more with the implementation phase of it. For instance, the issue of the VAT collected at the borders and the consequences this practice brings to businesses, was the main issue pointed out by the business persons interviewed. When the attention was brought to the
Inconsistencies existent in the tax law text, the interviewees agree that although they cannot come up with concrete examples, encountering them was not a rare occasion during their work. Their concerns were mainly related to the complexity of the laws and the unprofessional way of writing them. Consequently, most of the examples discussed in the paper are identified during the process of analytical research.

VI. Main Findings

As a result of the research conducted, a wide range of different inconsistencies present in the laws were identified. For a comprehensive presentation of the findings, it was necessary to join inconsistencies of a similar nature into categories. Thus, a guideline showing where the majority of future work needs to be concentrated in order to improve the laws and make them consistent to each other was structured.

The structure that these four laws have is first and foremost inconsistent. To address the need for a clearer and more understandable legislation, being loyal to a single structure is particularly important. This would contribute in the user friendliness of the laws further creating a basis for less confusion created for the taxpayers and tax professionals. Additionally, the articles inside each law are not consistently formulated. Consequently, many of them become redundant containing unnecessary elements that belong in other sections, while others are not easily comprehended.

Although these are long laws, they still exclude some important components which each law should contain. These are discussed in one of the categories for each one of the laws for which such missing components are known.

Another element negatively contributing to the consistency of the laws are errors identified throughout the texts. This category is particularly concerned with bad wording, bad translation and formulation of sentences and articles including common grammar, punctuation, and typing errors which give the impression of an unprofessionally written draft. Definitions and penalties, their consistency in comparative perspectives between the four laws and their clarity are subject of an important category when presenting the main results.
Finally, the hierarchy of documents, transparency of procedures, lack of updates and similar issues are presented and discussed in separate categories.

VII. Structure of the Four Laws in Comparative Perspective

To reach the conclusions with respect to the structure of the four laws, it was relevant to consider a benchmark showing a suitable structure of a tax law. In 2000, the International Monetary Fund (IMF) published a tax code of a hypothetical country. Named The Tax Code of the Republic of Taxastan (RT), this work contains all relevant elements composing also the tax legislation of Kosovo. Certainly, Kosovo has not established a tax code which would include all the tax laws in a single document; nevertheless, using this published work as a benchmark to assess whether the four laws are consistent in their structure seems adequate.

Two different standards are used to analyze the structure of these four laws. The first one is dedicated to the Law on Tax Administration and Procedures and for this, only the part of the Tax Code of the RT which lists the procedures of taxation is considered; while the ordering of articles in the other three laws is compared to a second standard set by the same document dedicated especially for the respective laws.

The structure of the Law on TAP is compared to a benchmark established based on the Tax Code of the RT. An evident inconsistency when compared to the benchmark is the priority that is given to the Tax Authorities and their legal base in the Law on TAP listing them immediately under the Definitions’ Article, while what the benchmark suggests is that the law on TAP explains the legal base of the Tax Authorities after stating all the important provisions starting from the rules of registration, tax payers’ rights to the sanctions for noncompliance, complaints’ procedures and alike. This is illustrated by Figure 1.1 below. Following the a similar structure to the benchmark, the Law on TAP would better consist with the other three tax laws the structure of which is discussed below.

31 Tax code of the Republic of Taxastan.(2000) International Monetary Fund
In the context of the structure of this law, it is relevant to discuss about two important components that the Law on TAP is lacking. The first one is the purpose of the law itself which is not stated as the practice requires. While in other three laws, the first article serves to inform on the purpose of that law, the first article in the Law on TAP is the Definitions’ Article. That it should contain a Purpose Article is showed in the Law on Supplementing and Amending the Law on TAP 03L-222 where the first article states:

**Article 1.**

*After Article 1 of the basic law a new Article 1.A shall be added with the following naming and content:*

**Article 1.A: Purpose of the Law**

*The purpose of this law is to establish the new complaint procedure against decision of tax bodies.*

The fact that this Law seeks to add a complementary purpose to the basic law, shows that the former takes it as given that the latter has a Purpose Article. This is an inconsistency which may cause confusion especially if the amendments were to be inserted in the basic law. In that case, it
would mislead the taxpayer to believe that the whole purpose of the Law on TAP is to “establish a new complaint procedure.”

The second missing component, and even more important one, is a separate section in this law that would list the Rights of the Taxpayer. According to Thuronyi, this law should list all those taxpayers’ rights which are common to every tax law. At the beginning of any audit process, the tax administrators have to explain these rights to the taxpayers, the author continues, and as such it is relevant that these are also stated in the body of the law.

Table 1.2 serves to illustrate differences in the structure of other three laws, more specifically, Law on VAT, Law on PIT and Law on CIT. The reason why only these three laws are being compared excluding thus the Law on TAP is that these three do share the same nature: each one of them regulates one tax, while Law on TAP is concentrated on regulating the procedures applicable to the whole tax legislation; conditionally, it may follow a different structure. Also, only several, more common and important articles, are selected from each law to serve the purpose of comparing since the number of the articles is very large to be compactly presented in a table. Similarly to the above comparison, Tax Code of the RT serves as a benchmark showing an ideal ordering of articles. As seen in the table, a number of differences exists among the structures of these three laws. To begin with, the laws are consistent with respect to articles on Purpose and Definitions - in each one of the three laws these are listed as article one and two respectively and a same order is proposed by the benchmark as well. However, the inconsistencies begin immediately with the article three which for the Law on PIT and the Law on CIT is the article on Taxpayers and for the Law on VAT is the article on Objects of Taxation. An even larger inconsistency is the positioning of the tax rates in the three laws. While in the Law on PIC and CIT tax rates are listed the sixth, in the Law on VAT the same article is ordered as 26th. Logically, and as the benchmark suggests, tax rates need to be presented earlier in the laws therefore Law on VAT stays inconsistent to a more adequate structure.

32 Gordon. (1996) Law on Tax Administration and Procedure pg. 15,16
33 Ibid.
### Table 1.2: Main articles as originally ordered in the laws

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A5. Tax Rates</td>
<td>A26. The Rate</td>
<td>A5. Taxable income</td>
<td>A5. Taxable income</td>
</tr>
<tr>
<td>A14. Entry into Force</td>
<td></td>
<td></td>
<td>A40. Appeals</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>A41. Applicable Law</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>A42. Entry into Force</td>
</tr>
</tbody>
</table>
As seen in the table 1.1, inconsistencies are present even between the Law on PIT and the one on CIT. That should have been less likely considering that the majority of provisions not only are similar in their names or procedures explaining, but also are similar with respect to the wording of the paragraphs. The cases used as illustrative examples but also many other cases easily visible in the above table and the one presented in Appendix IV show that there is a larger number of inconsistencies in the structure of law. One could conclude that a specific format that would make tax legislation of Kosovo compatible was not considered during the drafting. Compatibility as such would largely contribute in more coherent tax legislation.

VIII. Structure of the articles inside each law

Analyzing the structure of each one of the articles and paragraphs building the four laws, different inconsistencies were identified. A comparative perspective was mainly used to compare articles that describe related or similar procedures. As a result, it was found that even in these cases, the articles are differently structured and they are not as consistent as they should have been. For instance, the article on Interest Income, in the Law on PIT, puts in the same paragraph both, what is and what is not included as gross income from interest in the same paragraph (sub-paragraphs 1.1 to 1.3 as opposed to sub-paragraph 1.4):

**Article 13. Paragraph 1. Interest Income**

1. Gross income from interest includes:
   1.1. Interest from loans made to persons or entities;
   1.2. Interest from bonds or other securities issued by business organizations;
   1.3. Interest from (savings) accounts that bring interest, and are maintained in banks and other financial institutions.
   1.4. Gross income from interest does not include interest from the assets of the Kosovo Pension Savings Trust or any other pension fund defined under legislation on pension savings in Kosovo.
In other articles these two elements are presented as two different paragraphs. An example of that would be Article 9, Income from Wages of the same law:

**Article 9. Income from Wages**

1. **Gross income from wages shall include:**
   1.1. Salaries paid on behalf of an employer for work that the employee does under the direction of the manager or employer;
   1.2. Bonuses, commissions, and other forms of compensation that an employer or some other person, on behalf of the employer, pays to employees over and above salary;

[...]  
2. **Gross income from wages shall not include:**  
   2.1. Reimbursement of actual business travel expenses up to the amounts to be specified in a sub-legal act issued by the Minister;  
   2.2. Indemnity for accidents at work;  

[...]

The two illustrations above are only two of many examples of inconsistent articles with regards to their structure. As these are related more to the ordering of different elements, other articles do contain elements that do not belong in the article. A number of articles do contain definitions of terms inside. What is more important, it is stated that those terms are defined to serve the purpose of the law and not only the article’s, in which case it would not have been considered an inconsistency. Having said that, to illustrate better the issue it is important to give the examples of some of the articles described above such as the Article 23 of the Law on CIT:

**Article 23. Tax Loss**

1. *A tax loss as defined by this Law is the negative difference between the taxpayer’s income and expenses and allowances determined in accordance with this law.*

2. *The amount of the tax loss determined under the present Article may be carried forward for up to seven (7) successive tax periods and shall be available as a deduction against any income in those years.*

As long as there is a designated section for the definitions in a law, it is also more useful to have all the definitions listed so when the unknown term is mentioned anywhere in the
articles, it is easy for the reader to return to the definitions to understand its meaning without having to search for it in the whole law.

Another example with the definitions that increases inconsistency is Article 26 of the Law on TAP. Two paragraphs of this article involve the definition of the term tax, which is at the same time defined in the section of the definitions. This not only makes it possible for the law to be inconsistent but it is also redundant and unnecessarily adds to the length of the law:

**Article I: Definitions**

1.40. **Tax** includes any tax, contribution or other amount payable to TAK under legislation applicable in Kosovo.

**Article 26: Assessment of a third person’s liability**

[...]

6. The amount of the liability provided in paragraphs 4 and 5 of this Article is limited to the amount of tax not collected, withheld, or paid over. If, after assessing this liability against responsible persons, the legal entity, or organization other than a personal business enterprise, pays the tax that was due to be collected, withheld, or paid over, the amount assessed against the responsible persons shall be abated and any liens filed shall be released. **As defined in this law, the term 'tax' includes tax and contributions payable to TAK.**

7. **The liability provided in paragraphs 4 and 5 of this Article may be assessed against one or more persons deemed to be responsible for the failure of the legal entity or other organization to withhold, collect or pay over a withholding or collected tax. However, the total amount of tax not withheld, collected or paid over can be collected only one time. Once the full tax amount has been paid by any entity, organization, responsible person, or combination thereof, any remaining tax amounts due from responsible persons shall be abated and any liens filed shall be released. As defined in this law, the term 'tax' includes tax and contributions payable to TAK.**

A similar situation is present in some of the articles of procedures which also state the penalty for noncompliance. This is needless as there is a section especially designated for the penalties in the Law on TAP and thus any taxpayer, tax professional or tax administrator who needs to know the respective penalties for any noncompliance only needs to refer to the designated section.
Other issues related to the inconsistent structure of the articles include separate sentences which would make more sense if put in a single paragraph. Likewise, there are frequent cases when two different procedures are put together in the same paragraph making it difficult to distinguish between the two. There are exceptional cases of some articles which unlike all other articles have positioned in the middle of the paragraph elements which would best fit as the closing remarks of that article. It is relevant to discuss these structural elements of the articles since most probably more consistent articles with respect to their structure make the law itself better organized and more easily understandable, which is an important trait to have especially for the tax laws.³⁴

IX. Definitions

General Comments

Different countries have different practices related to the inclusion of definitions into their tax codes or tax legislation. While UK usually produces a massive designated section only for definitions, France does not have any separate section in its tax legislation.³⁵ Nonetheless, Gordon argues that a separate section for the definitions of terms used in the law considerably helps the correct interpretation of them.³⁶ While discussing some of the traits of the tax legislation in Kosovo, Mr. Bedri Peci, a professor of Tax Law at the University of Prishtina, emphasized the importance of having terms clearly and simply defined in the tax laws: “the definitions of the terms in the tax laws should be simplified in a manner of being very understandable in order to consist with the level of tax and legal awareness of the taxpayer.”

In four of the laws subject to study in this research work, defined terms are listed in a separate article which is necessary for the comprehensiveness of the laws. However, definitions are not completely user friendly considering that there are inconsistencies present when it comes to ordering and placing them. Definitions are ordered without any logical flow while many of them are put apart from the definitions’ section to be placed on other articles. An illustration

³⁵ Gordon. Law on Tax Administration and Procedures, pg. 6
³⁶ Gordon. Law on Tax Administration and Procedures, pg. 17
would better explain the situation. For instance, the ordering of the below definitions in the Law on CIT is not consistent considering that these are contextually similar: Foreign Source Income is defined through Kosovo Source Income and in the same way Operating Leasing is defined through Financial Leasing. However, the logical ordering would be to define first the term that is used later to define another term. While in the case of first two terms this is the order, in the other two it is not and this leaves space to conclude that there is not a determined rule to order the definitions.

**Article 2: Definitions**

1.6. **Kosovo source income** - means gross income that arises in Kosovo, which includes
   1.6.1. Income from economic activity where such activity is located in Kosovo;
   1.6.2. Income from the use of movable or immovable property located in Kosovo;
   [...]  
1.7. **Foreign source income** - gross income that is not Kosovo source income;

1.26. **Operating Leasing** – any leasing that is not a financial leasing.

1.27. **Financial Leasing** - a leasing that transfers substantially all the risks and rewards incident to ownership of an item of property. Title may or may not be transferred at the end of the leasing. A finance leasing meets at least one of the following four conditions:
   1.27.1. if the lease life exceeds seventy-five percent (75%) of the life of the asset;
   1.27.2. if there is a transfer of ownership to the leasing-receiver at the end of the leasing term;
   [...]  

A number of inconsistencies of the definitions in comparison of four laws and inside each individual law have been identified. This section aims to address some of these issues by discussing them in two perspectives: comparative perspective between the laws and analytical perspective of the definitions inside each law.

**Definitions in comparative perspective**

Comparing the definitions of all four laws there are two main inconsistencies identified. In many cases, same terms are defined differently in different laws. In this comparison are not considered the terms applicable only to a particular article but only those terms of general applicability and
which have a single meaning are taken into consideration. As an example, the term Resident is defined differently in four laws:

**Law on Tax Administration and Procedures**

**Article 1. Definitions**

1.38. Resident

1.38.1. a natural person who has a principal residence in Kosovo, or is physically present in Kosovo for 183 days or more in any twelve-month period of time; or

1.38.2. an entity, personal business enterprise, partnership, or association of persons which is established in Kosovo or has its place of effective management in Kosovo.

**Law on Value Added Tax**

**Article 2. Definitions**

1.13. Resident in Kosovo - a person that has a business place or a fixed unit, or in a short fall of such business place or a fixed unit, has a place with permanent address or where he usually resides in Kosovo.

**Law on Personal Income Tax**

**Article 2. Definitions**

1.20. Resident - A natural person who has a principal residence in Kosovo, or is physically present in Kosovo for 183 days or more in any twelve-month period of time; or an entity, personal business enterprise, partnership, or association of persons which is established in Kosovo or has its place of effective management in Kosovo.

**Law on Corporate Income Tax**

**Article 2. Definitions**

1.13. Resident - a person or group of persons that is established in Kosovo or that has its place of effective management in Kosovo;

As seen in the examples presented above, four definitions differ from each other. The Law on Personal Income is more specific when defining this term as it also determines the exact
days you need to reside in Kosovo to be considered a resident. In the Law on Tax Administration and Procedures the definition is quite long and yet not as specific. An inconsistency like this can lead to misinterpretations and confusions.

There are also some identified cases of one law referring to a term definition in another law where the term is not found. For instance, the Law on Tax Administration and Procedures refers to the Law on VAT for the definition of term *Taxable Person*. However, this term is not found in section of definitions in the Law on VAT. In reality, the term is defined in one of the articles of the law but there are two issues related to that. First, it is more appropriate for a law such as the Tax Administration and Procedures not to refer for definitions or any other procedure to the other laws as it should set the basis for the whole tax legislation upon which the TAK operates and as such should be a reference point. Second, it is much more difficult for a person who wants to see what is meant by a “taxable person” to go and search for the specific article in another law which explains this.

There are other inconsistencies with regards to definitions created mainly due to inconsistent translation. For example, the law on Tax Administration and Procedures refers to the Law on Personal Income Tax for the definition of term Principal Residence. In the latter, this term is named as “main residence” and “permanent residence.” The same happens with the Tax Administration acronym which in some of the laws is put as TKA while in others as KTA, then in the same laws the acronym is used interchangeably without any consistency.

*Analysis of definitions in each individual law*

Analysis of the definitions inside each law has shown that there are three different inconsistencies most commonly encountered. The first one is about the definitions not specifically defined. As an illustration, in most of the laws the term non-resident is defined as:

1.22 **Non-resident** - *any person or entity that is not a resident*;

Similarly, the term Operating Leasing is defined as:

1.36 **Operating leasing** – *every leasing that is not a financial leasing.*
It is important to point out that the terms *resident* and *financial leasing* are both defined in the same section; however, these two definitions should be defined for what they are and not for what they are not in order for them to be understood correctly from taxpayers of different backgrounds.

The second issue includes terms defined in the definitions section but not used in the text of law. The presence of such a term in the definitions’ section is not useful. For instance, in the Law on VAT, the term *Independent Review Board* is defined but is not mentioned anywhere else in the body of law. Furthermore, the same definition is amended to adapt to the reforms in the system of tax disputes while it should have been completely removed.

The third inconsistency has to do with a considerable number of terms which are used in the text and are not defined at all. Many times these terms belong to jargons of specific professions. In reality, usage of a specific jargon to draft tax laws make it useful to the lawyers but tax laws should to be understandable for the taxpayers of different backgrounds. The table 1.2 below lists only some of these terms for the respective laws:

Table 1.2: Undefined terms used in the Tax Laws

<table>
<thead>
<tr>
<th>Law on Tax Administration and Procedures</th>
<th>Law on Value Added Tax</th>
<th>Law on Personal Income Tax</th>
<th>Law on Corporate Income Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tangible Property</td>
<td>Taxable Person</td>
<td>Rents</td>
<td>Tax</td>
</tr>
<tr>
<td>Jeopardy Assessment</td>
<td>Bad Debt</td>
<td>Capital gains</td>
<td>Arm’s Length</td>
</tr>
<tr>
<td>Jeopardy Orders</td>
<td>Non-Resident</td>
<td>Bad Debt</td>
<td></td>
</tr>
<tr>
<td>Tax Investigation Unit</td>
<td></td>
<td>Arm’s Length</td>
<td></td>
</tr>
<tr>
<td>Mutatis Mutandis</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Inconsistencies in the Tax Legislation in Kosovo

X. Inconsistencies in the Provisions on Penalties

A work of Richard Gordon, “Law on Tax Administration and Procedures,” states that one of the purposes of tax laws should be the enhancement of taxpayers’ compliance. The latter is achieved through drafting fair and equitable laws which ease the way to comply to them. However, penalties which punish the noncompliance are also important tools towards that purpose. As important provisions, it is important that penalties are listed in a separate section of the Law on Tax Administration and Procedures because it is easier for the taxpayer and also tax administrator to allocate the penalty for noncompliance to any of the procedure without need to go back in the respective law and allocate the article on procedure to find somewhere into its paragraphs the penalty afterwards. Therefore, if there is a section designated to penalties, less space is left for inconsistency.

In the tax legislation of Kosovo, there is a separate section containing the penalties for noncompliance to different procedures. This section is only found in the Law on Tax Administration and Procedures and as such it is a well-organized component of the law; nonetheless, it is not totally consistent with regards to another aspect. There are a few articles of the procedures which also state the respective penalty although the same is stated in the designated section of the law. What is more, these two penalties do conflict each other. To illustrate this: the paragraph 5, Article 53 of the Law on tax Administration and Procedures, states:

**Article 53: Failure to Submit, Create or Provide Records**

5. Any person who is required to provide access to books or records or otherwise comply with Articles 14 and 15 of the law, and who fails to do so, shall be liable to an administrative penalty of one hundred (100) Euros for each day of default following the date specified by TAK. In such cases, TAK may also request a warrant from a judge authorizing the entry or access sought under Articles 14 or 15 of this Law.

While Paragraph 3, Article 15 which explains the procedures and to which this paragraph is referring, states:

38 Gordon. Law on Tax Administration and Procedures, pg. 17
39 Gordon. Law on Tax Administration and Procedures, pg. 17
40 Ibid.
**Article 15: Collection of Information or Evidence**

3. Any person who fails to appear at the time and place specified, or to provide information, in response to the requests for information described in paragraph 1 of this Article, shall be liable for such fines, penalties five hundred (500) Euros.

The first article states that the penalty is 100 Euro for each day of noncompliance, while the second article states that for the same noncompliance a penalty of 500 Euro will apply. The drafters of the laws need to particularly pay attention to these kinds of inconsistencies since these can lead to complex disputes that are not easily settled and can negatively affect the fair treatment of taxpayers.

**XI. Lack of Periodic Updates**

The analysis revealed that there are a number of practices on which little attention is being paid. One of them is the lack of periodical updating. Such a phenomenon was emphasized also by the professional accountant interviewed who claimed to has encountered different kinds of issues to understanding the laws as a result of this. For instance, in all four laws the term Ministry of Economy and Finance is still used while an institution under that name does not exists since 2010.41 This has not changed even after the laws on amending and supplementing the four tax laws have entered into power. The reason for that is the form of amending itself because it only changes the definition in the article of definitions without considering that the term is used as Ministry of Economy and Finance in the other parts of the text of basic law and it should be changed there as well.42 The same situation prevails with the presence of term UNMIK in the laws – an institution no longer relevant for the tax system of Kosovo and as such should be removed to not cause confusion.43

With regards to Laws on Amending and Supplementing a tax law there is another practice that reduces the user friendliness of the tax legislation in general. Some scholars do not consider frequent changes in the tax laws as a practice that serves the taxpayers to better

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41 Ministry
42 Law on Personal Income Tax, Law on Corporate Income Tax, Law on Value Added Tax
43 Article 8, Sub paragraphs 1.4 and 1.10, Law on Personal Income
understand the taxes since these changes may easily confuse them. Nevertheless, to adapt to new situations, some updates usually done through amending are necessary. Our young tax laws have at least one amendment each and there are reasons to conclude that these were adequate. The issue is publication of these supplementary laws. Publication is done in separate documents from the basic law and as a result the text in the latter is not accordingly updated. This not only reduces the practicability in reading the laws, but also confuses a taxpayer who in order to understand particular procedures needs to go back and forth to different documents.

**XII. The Issue of Referencing in the Laws**

Another inconsistency that might create confusion is the miss-referencing present in many articles. Common errors in this respect are references to inexistent definitions in other laws as discussed in the above sections, but there are also some other inconsistencies of similar character present in other articles. An example is Article 15 of the Law on Personal Income tax which refers to sub-paragraphs that do not exist.

With regards to referencing, another inconsistency encountered and that makes the laws on taxes less user friendly is the referencing of one law to another without stating the article and paragraph. As such, in order for the taxpayer to be fully informed about a specific regulation, he/she must investigate on other laws to find the needed part. An example would explain better the issue. The sub-paragraph 3.2.2, paragraph 2, article 5 of the Law on Corporate Income Tax refers to Law on Tax Administration about a procedure that needs to be followed by taxpayers:

**Article 5: Taxable Income**

3.2.2. A taxpayer eligible to reverse the option made in sub-paragraph 3.2.1 of this Article, must submit a request for ruling to TAK, in accordance with applicable provisions of the Law on Tax Administration and Procedures, and receive approval from TAK before maintaining books and records in accordance

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with Article 37 of this Law. Approval must be received by 1 March of the year for which the taxpayer requests the ruling.

Referencing as a tool in this case is adequate because procedures are regulated by the latter; however, to ease the process for the taxpayer, the respective article should be mentioned as well. Easing the procedures is especially important for Corporate Income Tax which regulates a tax levied on businesses. For the latter less time consuming procedures mean more time to invest in the development of their businesses. In reality, this was one of the main complaints that the businesspersons interviewed stated with regards to tax laws and tax system – the knowledge on procedures is not easily accessed and this is time-consuming. Different methods can be used by TAK to assist businesses in this respect and consistency of laws is one of them.

XIII. The issue of the Hierarchy of Documentation

These four tax laws under analysis are not the only legal documents regulating the tax system of Kosovo. Are laws, sub-legal acts, administrative instructions and regulations that together complete the hierarchy of documents upon which TAK operates. According to one of the interviewees, who has a career as tax official, auditor and financial director, it is this hierarchy which contributes to the complexity of procedures and makes it difficult for many taxpayers and tax officials to fully understand them. The other documents apart from the four laws are not subject of this study; nevertheless, there is a particular concern related to the second level of these legal documents - sub-legal acts. In almost each article in the four laws, there is a special paragraph stating that concrete procedures will be determined by a sub – legal act issued by the Minister. Three issues are related to this element of the laws. The first one has to do with the publication of these documents online. Some of these documents directly impact the taxpayers thus the latter should be enabled to easily get access to them. However, the sub-legal acts are not found neither in the publications of the TAK nor in those of Ministry of Finance or Assembly of Kosovo. Asked whether sub-legal acts were published online so the citizens could easily access them, the tax administrator interviewed responded positively.

45 Retrieved from Interview with Tax Administration Officer
Even if all sub-legal acts were published, the second issue related to them would restrain the improvement of the situation. Although in all four laws the term sub-legal act was mentioned approximately one hundred and fifty times, which translates to that many documents that need to be issued, none of them is specifically named. All of these are called “sub-legal act” without being accompanied by a number or specific name that would ease the identification of the needed document. That means, if a taxpayer needs to know more on a particular procedure, such as the calculation of interest on liabilities, he/she should search among all sub-legal acts to find the right document. The same issue is faced by the tax officials who need to have knowledge about all these acts in order to accomplish their job well. The sub-paragraph 2.2, paragraph 2, article 30 of the Law on PIT is a typical example of the important elements that are regulated by sub-legal acts and the way the latter are presented in the laws:

**Article 30: Unallowable Expenses**

2.2. Treatment of expenses which may be partially personal and partially business, or which may be subject to question as to whether they are personal or business, will be defined in a sub-legal act to be issued by the Minister.

Finally, the fact that these sub-legal acts in many cases are to be issued after a period of time by the minister shows that a gap is created between the time a law enters into force and a sub-legal act that serves to explain an important procedures for the implementation of that law is issued. This is a time gap during which taxpayers are subject to unknown procedures and when many disputes and irregularities may arise.

**XIV. Other inconsistencies**

The current structures of the laws and articles are not the only inconsistencies identified during analysis on the text of laws. Many major and minor errors are present in the text which if improved, would considerably contribute in simpler and more understandable tax laws. In this category are included all weakly written paragraphs or articles and also those not properly translated. Furthermore, grammar, punctuation and typing errors are quite common in all four
Inconsistencies in the Tax Legislation in Kosovo

laws leaving space for suspicion that the text did not undergo proper revision by lectors and translators before made available to the public. Some of these errors are also presented in this section. In this respect, more serious issues are the wrong referencing done from one article to another and the lack of periodic updates as these do easily create confusions and circumstances for misinterpretation.

During the analysis of the laws, both in English and in Albanian, many paragraphs and articles hardly understood were encountered. It is perhaps important to emphasize in this regard that laws that need to be understood by businesses and other tax payers and which impact very much their economic and non-economic activities should be written in a way that are comprehensive by a larger portion of the public. Such a trait would help the majority of the people in better understanding and as a result interpreting and complying with the laws. Paragraphs that are hardly understandable are numerous in these laws as for instance the Article 35, Paragraph 4 of the Law on Personal Income which suffers of an improper formulation of the sentence. This could come as a consequence of a weak translation as well:

**Article 35. Permanent Establishment**

A non-resident person who provides insurance shall, except in regard to reinsurance, is deemed to have a permanent establishment in Kosovo if he/she collects premiums in Kosovo or insures risks situated in Kosovo through a person other than an agent of an independent status to whom paragraph 6 of this Article applies.

Grammar errors and typing errors are quite common in both Albanian and English version. As an example, in Article 4 of the Law on Tax Administration and Procedures, instead of Directors (plural) the Director’s (possessive) is used. Typing errors such as that of Article 16 of the Law on Tax Administration and Procedures where *oaf* is typed for *of* or as the one in Article 60 where *exist* is typed instead of *exists* are only two of many other examples of the similar mistakes. Using wrong or unnecessary punctuation is also an issue many times encountered in the four laws. Sub-paragraphs of the paragraph 1, Article 27 of the Law on The Value Added Tax are a typical example of inconsistencies in the punctuation:

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46 Retrieved from Interview with Professional Accountant
**Article 27: Exemptions for Certain Activities in the Public Interest**

1. The following transactions are exempted:

1.1. Hospital services and medical care and closely related activities undertaken by bodies governed by Kosovo law in force or, under social conditions, in particular charging prices comparable with those applicable to bodies governed by Kosovo law in force, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;

1.2. The provision of medical care in the exercise of the medical and paramedical professions as defined by Kosovo laws into force and the supply of medicines, pharmaceutical products and medical and surgical instruments and apparatus,

1.3. The supply of human organs, blood and mother milk.

1.4. The supply of services by dental technicians in their professional capacity and the supply of dental prostheses by dentists and dental technicians.

As seen in this example, sub-paragraphs of the same paragraph, all end in different punctuation marks (i.e. semi-colon, comma, period and then comma once more). A few misspelled words are also present in this sample which, together with the inconsistent punctuation, make it look unprofessionally written.

The length of the laws is also another issue that might make it less user-friendly. Whether there are unnecessary provisions determined in these laws, it is not in the scope of this research to determine; however, there is another factor that might be playing a role in the too long of a text. Many articles are identified to contain two sentences which basically regulate the same dimension of the taxes. For instance:

**Article 15: Expenses General Provisions**

5. There shall not be allowed any deduction for any expense while it is not documented in the required way as foreseen by the sub-legal act issued by the Minister.

6. Expenses, including the expenses of depreciation, regarding the operating and financial leasing shall be reported in the way as foreseen in a sub-legal act that shall be issued by the Minister.\(^\text{47}\)

There are other examples where the sentences can be formulated simpler and thus shortened. That would not only contribute to reducing the length of the text of a law but also in the understandability of it.

\(^{47}\) Law on Personal Income Tax
XV. Conclusions and Recommendations

The aim of this research work was to identify the main inconsistencies that are present in the tax legislation in Kosovo, more particularly in four main laws upon which the Tax Administration of Kosovo operates: the Law on Tax Administration and Procedures, the Law on Value Added Tax, the Law on Personal Income Tax and the Law on Corporate Income Tax.

As a pioneer in the field, for completion of this study the only materials in disposal were the scholarly works which helped in building a picture of a good and proper tax law with regards to its structure and main components and the perspectives of different stakeholders on the issue which helped to understand how the inconsistencies in the laws are reflected to the work in practice.

The research conducted using these materials in disposal revealed the necessary information to conclude that a considerable number of inconsistencies are present in the tax laws analyzed. The main findings are: inconsistencies identified in the structure of laws when compared to each other, structure of articles inside each law, definitions and penalties. The list however is extended to inconsistencies like lack of periodic updating, miss-referencing and hierarchy of documents that complement the laws. Lastly, the findings show that grammar, typing and punctuation errors are the rule instead of exception when it comes to tax laws.

These inconsistencies largely contribute in reducing the level of comprehensiveness of the tax legislation. As a result, higher chances exist for misinterpretation of provisions by taxpayers and tax officials that can easily translate into mistakes that damage either side and are negatively reflected on the functionality of financial and economic system in Kosovo.

In consideration of the inconstancies identified and the consequences that may result, this research proposes a list of relevant recommendations addressing each inconsistency and thus aiming to make the tax legislation of Kosovo more compatible, understandable and practical to serve for the best the system it regulates:
- Establish an adequate structure for a tax law and redraft all four laws based on it. This would be a structure that is inclusive of all relevant provisions of the tax legislation and would list them according to the priority, meaning more important provisions are put first in the laws.

- Establish a template that could be used as a guide to rewrite the articles in the manner that similar ones stand consistent to that template. This would contribute in decreasing the number of articles which follow an irregular structure. With regards to articles, redundant sentences should be removed while unclear and complex paragraphs be formulated with a more comprehensive wording.

- List all necessary definitions in separate sections of each law. This would enable the taxpayers to comprehend various provisions better.

- Order definitions alphabetically as this would eliminate the inconsistencies in ordering of terms, but not only. It would also impact the understandability of the laws since the process of allocating a definition is eased.

- Identify and remove from the tax laws all unused terms and while terms that belong to a specific jargon should be all defined using simpler words with the tendency to make the law more understandable for taxpayers of different backgrounds.

- Define similar terms in the same way in different tax laws if applicable for that law. In this manner, it is ensured that especially for tax professionals who study tax legislation but also for taxpayers, the level of confusion and possibilities for misinterpretation of different provisions would decrease.

- Place all the penalties in the designated section of the penalties in the Law on Tax Administration and Procedures and make it the only place where the penalties for noncompliance are found. This would contribute to avoiding conflict between the penalties for the same noncompliance and reduce the possibility of disputes arising due to that.

- Establish a system of periodic updating of the tax legislation. Such a system would ensure that when there is a need to adapt the laws to new circumstances the competent departments are notified to initiate the process of amending without further due
 Insert the laws on amending and supplementing in the basic law as soon as these enter into power. Due to this act basic laws are adequately updated and taxpayers constantly informed

 Eliminate the grammar, punctuation, typing and translation errors, each law should undergo the process of proofreading and editing from professionals before being published. Tax legislation is the basement on which the system of the taxes, and in a larger scale the financial system and economy of a state are built. It is crucial that these reflect professionalism when presented to the public

 Check specific parts of the laws which use referencing with the aim of identifying the miss-referencing. In the same time, the references should be completed with more detailed information such as the specific article and paragraph referenced in the law

 Incorporate all tax laws gradually into a single tax code following the model of Tax Code of Taxastan. Such a format would ease the process of making laws more consistent to one another, would reduce their length and ultimately make the tax legislation more compatible and practical for use.

Further Work

The process of interviews has revealed important information on issues of different nature related to tax legislation. While this research work has focused on identifying inconsistencies present in text of the tax laws, the concerns of taxpayers and tax professionals interviewed show that many inconsistencies prevail in the process of implementation of laws due to unfavorable procedures that these laws regulate. In these issues mentioned during the interviews was include the problem VAT portion collected at borders and the damage that this brings to the businesses. Moreover, businesses are unsatisfied with the TAK’s approach towards them. As one of the businesspersons stated, the attitude of the TAK officials towards the businesses is rather hostile and they rarely inform the taxpayers about rules and procedures of the TAK.

Professor Peci focused in one important aspect of the tax system – the procedure of complaints. According to him, at least two levels of special court for finances should be established in order to increase the functionality of the tax system. The businesspersons
interviewed confirm the malfunction of the complaints system: “We had to wait for three years to have our complaint assessed by the Independent Review Board while in the mean time the penalties and the interest were paid to TAK,” one of them stated.

These and many other issues that damage Kosovar businesses, other tax payers and the tax system, are good subjects for future work with the tendency to investigate, reveal the truth and propose the remedies.
References


XVI. Appendices

Appendix I

Figure 1. Total Revenues According to Tax Types, 2011

**Total Revenues from Internal Taxes**

- Value Added Tax: 47%
- Corporate Income Tax: 22%
- Personal Income Tax: 21%
- Others: 10%

**Total Revenues from External Taxes**

- Excise Tax collected at borders: 51%
- Custom Duty: 25%
- Value Added Tax (collected at borders): 24%

*Source: Financial Statement for the year 2011. Ministry of Finance*
Appendix II

Table 1. Tax Rates on Personal Income

<table>
<thead>
<tr>
<th>Tax Brackets on Annual Basis</th>
<th>Tax Brackets on Monthly Basis</th>
<th>Tax Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-960</td>
<td>0-80</td>
<td>0%</td>
</tr>
<tr>
<td>961-3000</td>
<td>81-250</td>
<td>4%</td>
</tr>
<tr>
<td>3001-5400</td>
<td>251-450</td>
<td>8%</td>
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<tr>
<td>&gt;5401</td>
<td>&gt;451</td>
<td>10%</td>
</tr>
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</table>


Table 2. Tax Rates on the Main Tax Types

<table>
<thead>
<tr>
<th>Tax Type</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value Added Tax</td>
<td>16%</td>
</tr>
<tr>
<td>Corporate Income Tax</td>
<td>10%</td>
</tr>
</tbody>
</table>

Appendix III

Questionnaires

For business persons

➢ Mention some inconsistencies in the tax legislation you might have encountered during your work
➢ Which are some of the consequences that have or might result from the inconsistencies in the tax legislation? How do these damage businesses?
➢ Do you know about common misinterpretations of tax law provisions? If yes, on your opinion what are the causes leading to these misinterpretations?
➢ Have you read the tax laws? Are these easily understood?
➢ Have you faced issues in relation with TAK? Were these due to misunderstandings and/or inconsistencies on the tax laws?
➢ Have you ever appealed against TKA? If yes, how was the appealing procedure?
➢ Are you familiar with your rights as taxpayers?
➢ Are you familiar with the penalties determined to punish the noncompliance?
➢ Does your businesses face extra costs as a consequence of inconsistencies in the tax laws and if yes, approximately how much?
➢ On your opinion, what are the remedies available to improve the situation?

For tax professionals (accountant and audit)

➢ Mention some inconsistencies in the tax legislation you might have encountered during your work. If possible, please provide information on the kind of activity of your client and which was exactly the issue and situation faced?
➢ Which are some of the consequences that have or might result from the inconsistencies in the tax legislation? How do these damage you as tax professional?
➢ Do you know about common misinterpretations of tax law provisions? If yes, on your opinion what are the causes leading to these misinterpretations?
Mention some of the troubles that you face when serving your clients of different activities to pay their tax dues.

Discuss whether the laws and regulations of the Tax Administration are easily understood.

Are you familiar with all the procedures of TAK? Were you given the chance to read any of the sub-legal acts issued by the Minister of Finance as determined in the Law on Tax Administration and Procedures?

Have you faced issues in relation with TAK? Were these due to misunderstandings and/or inconsistencies on the tax laws?

Have you ever appealed against TKA? If yes, how was the appealing procedure?

Are you familiar with the penalties determined to punish the noncompliance?

On your opinion, what are the remedies available to improve the situation?

For the tax administrators

What is the job position you hold in TAK?

Do you find the tax laws on which TAK functions to be understandable?

During your experience with TAK, are there inconsistencies in the tax legislation. If yes, what are this inconsistencies and have these prevented your from adequately understanding the procedures?

Which are the consequences that inconsistencies in the tax legislation bring to your activity?

Which are some of the complaints that you have received from the taxpayers during your work that can relate with the inconsistencies in the laws? Is the number of complaints high?

Which are some of the mistakes that have been done from the officials of Tax Administration that have come as a result of inconsistencies in the taxes

Mention some of the comments received from regular reports of IMF and World Bank in relation to TAK and collection of taxes

Do you have sub-legal acts to use them for inner procedures? Are these published online?

Remedies available to improve the situation, from their perspective

In regular reports that you receive from International Monetary Fund, which are some of the most common critiques directed to TAK?
The majority of procedures of TAK are regulated by sub-legal acts. Are these acts published online and do taxpayers have easy access on them?

Please list the below legal documents according to their importance:

- Laws
- Administrative Instructions
- Sub-Legal Acts
- Regulations

For the professor of Tax Laws

- Mention some of the inconsistencies in the tax legislation you have encountered while reading the laws.
- Do you know about any common misinterpretations of tax law provisions and causes leading to these misinterpretations?
- Comment the structure of the four laws. Are these too long, easy to be understood and well-structured?
- Mention some of the fallacies of the tax system, with respect to these four laws in study, from the legal point of view
- List the remedies that could contribute in addressing those fallacies
- Which is the correct structure that the laws should have?
- Do you think that the penalties for noncompliance should be placed under the respective articles explaining the procedures or in a separate section?
- Do you think that it is better that in a law such as tax law the definitions of terms need to be alphabetically ordered?
- Should laws on amendments be inserted in the basic laws and not left as separate documents?
**Appendix IV**

**Table 3. The structure of articles in the Tax Laws**

<table>
<thead>
<tr>
<th>Law on Tax Administration &amp; procedures</th>
<th>Law on VAT</th>
<th>Law on Personal Income Tax</th>
<th>Law on Corporate Income Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>A6. Tax Officials</td>
<td>A4 Taxable persons</td>
<td>A5. Taxable income</td>
<td>A5. Taxable income</td>
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<tr>
<td>Section</td>
<td>Description</td>
<td>Blanks A9 through A25</td>
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<tr>
<td>A10. Supply of goods</td>
<td>A10. Income from business activities</td>
<td>A10. Allowable Deduction</td>
<td></td>
</tr>
<tr>
<td>A18. The supply of services in his own name but on behalf of another person</td>
<td>A18. Bad Debt Expenses</td>
<td>A18. Repairs &amp; Improvements</td>
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</tr>
<tr>
<td>A32. Tax that is Due &amp; Payable</td>
<td>Ch 7. Rates</td>
<td>A 28. Deduction for charity contributions</td>
<td>Ch 6. Transfer Prices, Avoidance of Double Taxation</td>
</tr>
<tr>
<td>A34. Levies</td>
<td>Ch 8. Exemptions Without Right of Deduction of Input VAT</td>
<td>Ch 5. Unallowable Expenses</td>
<td>A28. Avoidance od Double Taxation</td>
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</tr>
<tr>
<td>A38. Recovery of tax from partners &amp; members of unincorporated associations</td>
<td>A29. Exemption on importation</td>
<td>A32. Cash &amp; Accrual Method of Accounting</td>
<td>A31. Withholding on certain payments to non-residents</td>
</tr>
<tr>
<td>A43. Uncollectible Tax Depts</td>
<td>A32. Exemptions related to international transport</td>
<td>A35. Permanent Establishment</td>
<td>A34. Tax Declarations</td>
</tr>
<tr>
<td>A44. Illegal Acts</td>
<td>Ch 12. Exemptions Relating to Certain Transactions Treated as Exports, Exemptions for the Supply of Services by Intermediaries, &amp; Exemptions Relating to Customers &amp; Similar Arrangements</td>
<td>A36. Prices of Transfer</td>
<td>A35. Tax payments</td>
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<tr>
<td>A45. Director General may re-characterize arrangements</td>
<td>A33. Exemptions relating to certain transactions as exports</td>
<td>A37. Avoidance of Double Taxation</td>
<td>A36. Requirement for Books &amp; Records</td>
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<tr>
<td>A50. Administrative Penalty with respect to Fiscal Certification</td>
<td>A 37. Exercise of the right of deduction</td>
<td>A41. Withholding on certain payments to non-residents</td>
<td>A40. Appeals</td>
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<tr>
<td>A51. Administrative Penalties with respect to Failure to File &amp; Pay</td>
<td>A38. The manner to exercise the right to deduct input VAT</td>
<td>Ch 10. Partnerships &amp; Grouping of Persons</td>
<td>A41. Applicable Law</td>
</tr>
<tr>
<td>A52. Administrative Penalties Related to Understatements of Tax &amp; Overstatements of Tax Refunds</td>
<td>A39. Calculation of the deductible proportion of input VAT</td>
<td>A42. Partnerships &amp; Grouping of Persons</td>
<td>A42. Entry into Force</td>
</tr>
<tr>
<td>A53. Failure to Submit, Create or Provide Records</td>
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<td>Ch 11. Payments, Credits, &amp; Declarations</td>
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<tr>
<td>A54. Penalties for failure to withhold tax</td>
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<td>A43. Payment of tax for economic activities</td>
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<tr>
<td>A55. Failure to surrender property subject to levy &amp; setting aside money</td>
<td>A42. Deduction of input VAT on commencement of economic activity as VAT registered taxable person</td>
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<td>A56. Administrative Penalties for errors by Taxpayer Representatives, Tax Advisors, or other Persons acting on behalf of a taxpayer</td>
<td>Ch 14. Bad Debts</td>
<td>A45. Payment of tax for intangible property</td>
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<tr>
<td>A57. Administrative Penalty for Failure to Install Fiscal Electronic Device for capturing &amp; recording transactions</td>
<td>A43. Bad debt for VAT purposes</td>
<td>A46. Payment of tax for other taxable income, including capital gains</td>
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<td>A58. Administrative Penalties with regard to VAT</td>
<td>Ch 15. Invoicing &amp; Issuance of Other Tax Documents</td>
<td>A47. Credits against tax</td>
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<td>A59. Administrative Penalty for goods without origin</td>
<td>A44. Issuance of invoices &amp; other documents serving as invoices by a taxable person</td>
<td>A48. Tax declarations &amp; payments</td>
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<td>A60. Penalty for Civil Fraud</td>
<td>A45. Content of invoices issued by taxable persons to taxable persons</td>
<td>A49. Appeals &amp; temporary measures</td>
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<td>A61. Additional sanctions</td>
<td>A46. Content of an invoices issued by taxable persons to other persons</td>
<td>A50. Implementation</td>
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<td>A62. Reduction in sanctions</td>
<td>A47. Debit &amp; Credit Notes</td>
<td>A51. Applicable Law</td>
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<td>A63. Criminal Tax Offenses</td>
<td>A48. Bad Debt invoice</td>
<td>A52. Entry into Force</td>
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<td>A66. Application of the Criminal Procedures Code</td>
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<td>Ch 16. Tax Periods &amp; VAT Returns</td>
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<td>A71. Participation of the TAK in pre-trial proceedings</td>
<td>A54. VAT returns, remittance &amp; payments</td>
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<td>Ch 17. Bookkeeping &amp; Storage of VAT Books, Records &amp; Related Documentation</td>
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<td>A73. Suspending proceedings</td>
<td>A55. Requirement to record information, retaining records &amp; providing access</td>
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<td>A74. Tax investigation unit</td>
<td>A56. Storage of invoices, bad debt invoices, credit &amp; debit notes, simplified invoices, coupons &amp; documents serving as invoices, books &amp; records</td>
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<td>Appeals to the Tax Administration</td>
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<td>Keeping the TAK integrity &amp; Anti-Corruption</td>
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<td>A86.</td>
<td>Temporary International Measures</td>
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<td>A87.</td>
<td>Sub-Legal Act</td>
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