

# *“LEGAFORMALESTY” – a different approach for a new amnesty in Albania —*

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## **Abstract**

*Governments have periodically turned to tax amnesties, as a mechanism used in the frame of their fiscal programs, or partly to activate more capital in the national economy and establishing the fiscal rule to a new higher level. As a non-traditional instrument, it can be used to smooth out inconsistencies, arising from the existence of a tight tax regulatory framework, in an economic environment that experiences highly dynamic changes, within a short period of time. The implementation of the fiscal amnesty is not mainly related more to a country's stage of economic development, or to the level and professional competence of the bodies collecting fiscal obligations, than to the practical objective that is required to be achieved.*

*In Albania, various governments have made several efforts, back in 2011 and 2017, to implement the fiscal amnesty but, unfortunately, they were partial and failed to meet their initial goals and objectives. This is because they were not comprehensive and, above, all did not contain the key element, that of legal amnesty and secrecy.*

*For an amnesty to be successful in Albania, it is proposed that, along standard elements of tax amnesty, it must also consider the legalization of all real assets built without permission, or illegal ones, as well as the formalization of various business activities, combined with the legal amnesty. Combining these elements would create an advantageous synergy, in terms of maximizing the expected economic effect, thus using amnesty not just as a classic instrument of collecting some more budget revenues and increasing fiscal discipline in the future, but as a lever that produces an efficient moment for the country's economic development.*

**Keywords:** *legaformalesty, tax amnesty, legalization, formalization.*

## Intro

Fiscal amnesty is a mechanism that allows individuals and companies to declare and pay hidden income, or to settle outstanding liabilities, without being subject to any criminal penalty for bringing to light previous tax evasion.

Alm (1998) says that governments of all kinds have frequently turned to tax amnesties as part of their fiscal programs. An amnesty typically allows individuals or firms to pay previously unpaid taxes without being subject to some, or all of the financial and criminal penalties that the discovery of tax evasion normally brings. Deak (2009) puts that most economists who conduct thorough studies of tax amnesty programs eventually find tax amnesty a legitimate means of economic policy. Also, he stresses that amnesty is one of the tools that a modern tax administration uses to resolve conflicts between rigid statutory law and rapid changes in world economic events.

The implementation of the fiscal amnesty is not mainly related more to a country's stage of economic development, or to the level and professional competence of the bodies collecting fiscal obligations, than to the practical objective that is required to be achieved. According to Alm (1998), many countries have also used one or more amnesties. These countries include those in all parts of the world: in Europe (Belgium, France, Ireland, Italy, Switzerland), Latin America (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Honduras, Mexico, Panama, Peru, Uruguay), Asia (India, Malaysia, Pakistan, Sri Lanka), and the Pacific (Australia, Indonesia, New Zealand, the Philippines).

However, tax amnesties remain a controversial and disputable mechanism. Inevitably, their main objective is to temporarily increase budget revenues. This objective may be met, but it may not be met at the expected levels; moreover, it can build the belief and nurture expectations for other fiscal amnesties in the future, thus compromising the regular payment of fiscal obligations after the amnesty. However, as Deak (2009) puts it, tax amnesty is not diabolic — to be successful it must be reasonable.

## Literature review

Baer & Le Borgne (2008) define the tax amnesty as a limited-time offer by the government to a specified group of taxpayers to pay a defined amount, in exchange for forgiveness of a tax liability (including interest and penalties), relating to a previous tax period (s), as well as freedom from legal prosecution.

According to Le Borgne (2005), tax amnesties are conducted for two primary reasons: (1) to raise revenue in the short term, and/or (2) to increase compliance

(e.g., by encouraging taxpayers to increase and pay previously undeclared tax, file tax returns, or register to pay taxes, so as to increase revenue and horizontal equity in the medium-term.

Amnesties generally fall in two categories: *financial and legal*. For the former, a tax amnesty implies a reduction (in real terms) of taxpayers' declared or undeclared tax liabilities as established by law. This reduction can be achieved through a variety of measures: for example, through a reduction or cancellation of:

- 1) interest and penalties owed on the underreported or undeclared taxes or
- 2) tax liabilities (or some combination of these).

The latter includes a waiving of civil and criminal penalties. Certainly, there are different types of fiscal amnesties, which can be considered by governments, according to the purpose and objective they want to achieve and fulfill. Baer & Le Borgne (2008) point out that Amnesties

are most often designed to include all taxpayers or large groups of taxpayers, although the amnesty's specific conditions may differ (see table below). According to Franzoni (1996), tax amnesty regulations are executed in three ways. First, Revision Amnesty offers taxpayers the platform to modify the income return of specific tax years with lower punishments. Acceptance of the pardon does not exempt taxpayers from the scrutiny and auditing activities of tax bodies. Secondly, Investigation Amnesty exempts chargeable persons from tax audits on specific periods on when an amnesty fee is paid. Lastly, Prosecution amnesty partly waives the punishment for taxpayers who face charges of tax offences and eases the judicial process.

Notwithstanding the type of amnesty, the government may pursue, all amnesties are not a panacea for tax compliance in the future. As a matter of fact, Baer & Le Borgne (2008) affirm that three results from the theoretical literature stand out:

- 1) Tax amnesties on their own have, at most, only a limited effect on compliance.
- 2) The compliance effects of tax amnesties are uncertain (both the short-run and long-run impacts).
- 3) The revenue impacts of tax amnesties are uncertain (both the short run and long-run impacts).

Who Is Targeted	What Taxes Are Covered	What Is Forgiven	Accompanied by	Other
Unregistered taxpayers	Personal taxes	Interest	Increased enforcement	Duration - One-time
Nonfilers	Business taxes	Tax penalties	Increased audit	- Permanent
Delinquent taxpayers: - Unpaid tax liabilities	Property taxes	Criminal prosecution: - Civil penalties - Imprisonment	Tax reform: - General - Designed, in part, to address non-compliance	Basis: - Legislative - Administrative decree
Evaders: - Nonreported tax liabilities - Underreported tax liabilities	Other	Tax liabilities: - Small amounts - Any amount		

Source: Pellechio, 1003.

Also, Alm, McKee and Beck (1990) found in an experiment that an amnesty reduce post-amnesty tax compliance, because the introduction of an amnesty increases taxpayers' expectations of future amnesty will be done. Additionally, Gerger (2012) affirms that the negative effects of tax amnesties on voluntary compliance are more than the positive effects. The most important reason for opposing to the amnesty in tax code is the view that it runs counter to the justice and equity principles. In addition, it will influence the equality of competitiveness negatively, as well as spoiling the justice and equity in taxation. Tax penalties and late fees have a role in the equality of the competitiveness.

However, as OECD (2015) notes, voluntary disclosure schemes or programs are opportunities offered by tax administrations to allow previously noncompliant taxpayers to correct their tax affairs under specified terms.

On the other hand, Legeida et.al (2003) note that another classification for tax amnesties may be given, regarding to the duration and type of benefit that a taxpayer receives, as follows:

### *Duration criterion*

**One-shot amnesty:** taxpayers are given a pre-determined period of time to legalize their past incomes (typically from two months to a year). It is expected that this offer will not be repeated in the future. Such kind of tax amnesty, with reduced tax rates is quite attractive since it creates strong incentives for people to participate in it, thus, widening the tax base. However, it may lead to the future expectations of such amnesties, thus, reducing the tax compliance of individuals.

**Intermittent amnesty:** amnesties are declared every few years. The intermittent amnesty is recognized to be the worst kind of a tax amnesty because it raises permanent expectations concerning amnesties and reduces tax compliance.

***Permanent amnesty:*** under such amnesties the possibility to legalize past incomes exists all the time, under normal, non-reduced tax rates. Except for taxes, taxpayers may be obliged to pay modest interest rates or fines. Criminal immunity is usually granted to tax evaders, who voluntarily paid their delinquent taxes. As several empirical studies have shown, since the permanent tax amnesty is conducted at the non-reduced tax rates, its implementation leads to no revenue loss or even revenue increase in the long run (as opposed to negative long-run effects of one-shot and intermittent tax amnesties caused by expectations of further amnesties in the future).

### *Type of benefit to taxpayer*

***Return amnesty:*** under such amnesty taxpayers are offered the possibility to revise their tax returns with a reduced penalty. Such amnesty enables taxpayers to correct their income returns (upwards) and pay the missing taxes. Taxpayers accepting the amnesty are not immune from the investigation and auditing activities of the tax administration.

***Investigation amnesty:*** such amnesty grants taxpayers with exemption from investigating the real amount and the origin of declared incomes, sometimes through paying a special amnesty fee. This type has been widely used in Italy (five amnesties between 1973 and 1995), the Philippines (seven amnesties between 1973 and 1986), Columbia (1987) and Argentina (four amnesties between 1970 and 1984).

## **Costs and benefits related to tax amnesty**

Undertaking a tax amnesty is a complex and delicate decision, which should be based on an in-depth analysis of all positive and negative aspects that may accompany its implementation and especially the effects it is expected to have in the period following its completion. Of course, like any business, tax amnesty has its benefits and costs.

### *Benefits*

Tax amnesty may ensure and offer the following benefits for government and taxpayers:

1. ***Generating short-term revenues for the state budget.*** Through tax amnesties, governments mainly aim, but not only, to increase fiscal revenues, in the

short-term. Practically, some amnesties have managed to meet this objective, by providing significant revenues to the state budget (the case of tax amnesty in Italy where, by the end of 2009, more than EUR 5 billion were collected in the state budget<sup>1</sup>).

2. ***Reducing administrative costs.*** The amnesty enables fiscal authorities to reduce bureaucracy and other administrative burdens, which translates into significant monetary cuts.
3. ***Repatriating funds from abroad (mainly from migrants, and not only).*** It is one of the benefits with long-term economic effect in the economy, which enables the entry of new additional liquidity, within the financial system and economy, thus enabling a new impetus and momentum for the entire country's economic development.
4. ***Establishing and implementing a more rigorous fiscal discipline, after its implementation and increase of voluntary payment of tax liabilities.*** Alm (1998) stresses that advocates of amnesties argue that voluntary tax compliance may actually increase after an amnesty, as the number of persons who want to enforce the rules, but who step away from the effects of the law on their activity during the past periods. By giving them the opportunity to correct their previous tax evasion and to enter or re-enter the system, a tax amnesty will increase voluntary compliance: these individuals no longer must conceal their tax evasion, their guilt is lessened, and the tax authority now has a record of their activities, and thus the tax base increases. Leonard & Zeckhauser (1986) say that a tax amnesty makes future adherence to the tax code more likely by removing the need to conceal past sins. An amnesty is desirable if it lowers the cost of behaving well in the future. However, no tax amnesty can be really successful if it is not accompanied by comprehensive reforms in the tax system, as well as the modernization of aspects related to legal enforcement in the field of taxation, in particular. Amnesty as a stand-alone instrument does not offer much benefit to society. It is now widely accepted in the economic literature that fiscal amnesty should be accompanied by a certain policy, which should aim at a more efficient legal implementation of the fiscal rule.
5. ***Formal recognition and guarantee of property rights.*** Legeida et.al (2003) note that tax amnesties grant a perfect opportunity to taxpayers to declare officially their incomes, stocks, real estate, cultural values, etc. and, thus, ensure their property rights. Currently, these objects may be registered under the name of unemployed or retired relatives or friends. After settling the old debts with the state, a taxpayer receives an opportunity to legalize all his savings and start his tax life from the very beginning.

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<sup>1</sup> EURONEWS: "95 billion euros reeled in by Italian tax amnesty", December 30, 2009.

## Costs

Amnesties have always accompanying costs, as well as benefits. Some of them are as follows:

1. ***“Moral hazard” and the risk of reduced payment of fiscal obligations by regular taxpayers.*** Many critics of fiscal amnesties claim that, in the long run, fiscal amnesties can have a negative impact on budget revenues for a number of reasons:  
*First*, regular taxpayers may view fiscal amnesty as a favor to tax offenders, thus jeopardizing their willingness and willingness to pay fiscal obligations in full compliance with applicable regulatory framework,  
*Second*, some individuals may agree to pay taxes according to the requirements of the tax amnesty, without feeling at all “guilty” of not paying them in the past,  
*Third*, a “bare” announcement and a purely procedural implementation of the tax amnesty may reveal to taxpayers the existence of a tax evasion in large proportions, which before the amnesty could be perceived, but not verified to that extent, that it is revealed after the practical implementation of the amnesty,  
*Fourth*, the announcement of the amnesty may show taxpayers how weak the tax administration has been in achieving legal enforcement in the fiscal area. This is because regular taxpayers may think that their fear of daring to commit any tax evasion has not been justified,  
*Fifth*, many individuals hope that other amnesties may follow later, so they do not have to pay more taxes today, as their evasion will be amnestied again in the future.
2. ***Failure to realize budget revenues in significant quantities.*** Although one of key goals of tax amnesties remains the increase of budget revenues within a short period, it cannot be claimed that its mere implementation in practice constitutes a guarantee for the realization in a satisfactory size of the revenues projected to enter the state budget.

## Tax Amnesties in Albania – a brief history

During the second decade of 2010, the Albanian governments undertook 2 amnesties, in 2011 and in 2017, respectively.

The 2011 Tax Amnesty was an amnesty run in the most classic form. It included businesses that had not declared tax or customs duties, individuals that possessed



informal and undeclared money & funds, and companies that owned real estate or machinery and equipment below the market value. Such amnesty collected ALL 1,223,076,719.90 (approx. EUR 10 million).

The second amnesty was implemented in 2017 and it included individuals, businesses, legal entities, companies, whose infringements committed were partially or completely forgiven. This amnesty may be considered a bit more comprehensive, compared to that of 2011, but still not complete and did not cover all problematic areas, for the Albanian economy.

Both amnesties failed to reap the intended results, for the following reasons:

1. The approved legislation was incomplete for a standard tax and penal amnesty. It lacked the penal/criminal component, along with the fact that it was not approved by the 3/5 of all required votes, in such cases.
2. Apparent “moral hazard” as the 2011 amnesty followed the previous legal “interventions”, in terms of obligations’ forgiveness.
3. The implementation of tax amnesties by tax administration has been sluggish and even counterproductive.
4. Tax amnesty should be initially discussed with various stakeholders, and an informing and awareness campaign should have followed suit (such a campaign was never undertaken).

### **Tax Amnesty in Albania – the need for a different approach for a new amnesty in Albania**

The implementation of tax amnesty in Albania could give quite a few positive effects on the economic activity and the Albanian economy, itself. As above mentioned, during the last decade, two fiscal amnesties have been undertaken in Albania: in 2010 and 2017, which were for the most part very similar to each other (the 2017 amnesty was broader) and were implemented in their classic format.

If the arguments for carrying out such fiscal amnesties, back in 2010 and 2017, were based on the complex economic situation, which followed the global financial and economic crisis and weak economic developments, at national, regional and European level, in the actual period, it is considered that the undertaking of another tax amnesty, beyond its classical form, would be suggestible, aiming at giving a positive thrust to the economy and business performance in general, in the new conditions created in the regional, European and global framework, as related to stagnation of economic growth and real fears of falling into economic recession, this time globally.



## *The suggested type of amnesty and the “scope” of its implementation*

Although its “frequent” application may not be recommended, in terms of the “moral damage” effect it may cause, it should be noted that the scope of tax amnesty would certainly produce different effects, depending on the range of its extent to the economy and the aspects it encompasses. Technically, and in most amnesties, it can only include undeclared income, at personal and business level, but in some other cases, it can be even more comprehensive, accepting as elements of amnesty and business obligations in arrears, capital exported abroad, or real assets.

Normally, in the current situation when Albania is in a still - unfinished process of legalization of immovable properties built illegally, as well as in a vetting process of the justice system, there could be a special interest for the realization, by the Government, of an all-inclusive and comprehensive amnesty, that goes beyond the limits of a simple and repeated tax amnesty.

The economic interest of almost all stakeholders, including not only institutional ones (banks, etc.) but above all social stakeholders, and the future economic development interest, require the implementation of a comprehensive amnesty, in the form of “LEGAFORMALESTY”.

### ***LEGAFORMALESTY – or the comprehensive all-inclusive amnesty***

The amnesty that best suits the current economic, social and financial reality of Albania would be in the format of:

**LEGAFORMALESTY = LEGALization + FORMALization + AmnESTY**



Technically, it is suggested that amnesty, in addition to the standard elements of a tax amnesty (personal and business income, arrears and possible repatriation of capital from abroad), must include the legalization of all real assets (buildings and constructions) without permit, or illegal, as well as the formalization of various business activities. By combining these elements, within the scope of the amnesty, it would create a useful synergy, in terms of maximizing the expected economic effect, in the macro framework, thus using amnesty not just as a classic instrument of collecting some more budget revenues and increasing fiscal discipline in the future, but as a lever that produces an efficient moment of economic development for the country.

Specifically, the following positive effects are aimed through the application of LEGAFORMALESTY:

***More revenues in the state budget, in the short-run and in the future, by creating a larger tax base.*** International practice has always shown a positive effect on the realization of increasing revenues in the state budget, after the implementation of tax amnesty. What remains to be predicted is the size of such revenues, which remains to be proven in practice. However, it is judged that this positive element will not remain the main goal of Government, within which the latter would formulate a quantitative projection, specific to the budget of the year, when the amnesty will be implemented. Past amnesties have not yielded any significant substantial effect on the significant increase in budget revenues. On the other hand, the deep formalization of entrepreneurship inevitably expands the taxpayer base, which, in the long run, translates into a real potential for more budget revenues.

***More available liquidity within the Albanian financial system, in various forms of financial investments (deposits, financial investments in securities, pension and investment funds) and more potential for economic activity.*** In whatever form, the amnesty may be implemented, it will be accompanied by an increasing influx of funds that will be channeled through the Albanian financial system. This will certainly have a positive effect, in terms of increasing financial investments in general (in ALL and foreign currency), thus contributing to an even more satisfactory liquidity situation, within the Albanian financial system, which will translate into more lending and financing opportunities for economic activity in the country and causing a more active participation of institutional investors and by encouraging the use of more financial instruments and deepening the system, itself.

***Compensation of outflows in foreign currency.*** Despite the fact that Albania is experiencing a return of positive upward flows of remittances, their trajectory is not safe in the coming periods and it may change direction, depending on the direction of migratory flows. On the other hand, since Albania has a liberalized capital account for many years from now, its financial system will continue to face, inevitably, an increasingly complex challenge, in terms of competition for free funds and the highest possible return for financial investments, already on a global scale. Given the level of technological advancement and ease of financial investment globally, the flows generated by a possible (comprehensive and all-inclusive) tax amnesty would enable the fading of negative effect of Albanian capital exporting, in the form of financial investments abroad.

***Creating a new fund of real assets (real estate and movable properties), which may serve for further expansion of lending activity in the economy.*** The “*en masse*” legalization of real assets (illegal buildings and constructions without permit) would create a very substantial and permanent fund of real assets, which may be easily and naturally used in the process of further expansion of lending activity in the economy. For the very stage of development of the Albanian financial system and the obvious shortages in financial instruments and institutions, real assets remain almost the only possibility of guaranteeing and collateralizing loans, be it for individual or for business purposes. Specifically, by the end of June 2019 the loan for the purchase of real estate (housing and business) was over ALL 199 billion, or about 37.6 percent of the total loan portfolio. Based on the banking system requirements for loan collateral coverage, it is estimated that at least over ALL 250 billion (equivalent) value of real assets (real estate) is set today as collateral only for real estate loans, not to mention the frequent use of real assets and guaranteeing other loan types (for business or consumer purposes).

Under current conditions, when:

- we have such a massive use of real assets, in the process of securing loans of any kind over the years,
- the smaller increase of the supply value of mortgaged real assets, compared to the increase of lending activity to the economy and population,
- the lack of a critical mass of instruments and other alternative mechanisms for securing bank loans,
- fines and interest-delays by their nature are extraordinary revenues and with a negligible weight in the state budget,

it is an imperative and necessary, among other things, to create a new offer of mortgaged (regular) assets, which would further facilitate the lending process by commercial banks, without taking into account the direct monetary effects of formalizing and eliminating fines and arrears, and the facilitating effect the latter may provide to the business and its day-to-day liquidity situation.

***Increasing the taxable base for property tax.*** The creation of a new offer of mortgaged (regular) assets and formalization would definitely produce a positive chain effect, in increasing the taxable base for the property tax. This is especially important in the current situation, when the country will soon face an even more substantial reform than the one a few years ago, related to the personal declaration of income, for the purposes of calculating integral tax liabilities.

## Conclusion

Albania needs to apply and implement a comprehensive and full amnesty for capital, duties and property legalization and formalization, a *Legaformalesty*, as it could provide long-term benefits for the national economy and the general public will put more confidence in the fiscal system. So, any legal initiative to pave the way for the next amnesty, must consider such form of amnesty which could avoid all the wrong steps undertaken during the last two amnesties, so laying the foundation for a successful process with clear and obvious benefits, in terms of: (1) Increasing short-term public revenues in the state budget, (2) Reducing the informal economy, (3) Repatriating the Albanian migrants' money, (4) reducing the operating cost of tax administration, and (5) empowering the fiscal legislation and increasing public confidence in the tax administration.

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