



ICLG

The International Comparative Legal Guide to:

Corporate Tax 2019

15th Edition

A practical cross-border insight into corporate tax work

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Contributing Editor

William Watson,
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Sub Editor

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Senior Editors

Suzie Levy
Caroline Collingwood

CEO

Dror Levy

Group Consulting Editor

Alan Falach

Publisher

Rory Smith

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
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EDITORIAL

Welcome to the fifteenth edition of *The International Comparative Legal Guide to: Corporate Tax*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of corporate tax

It is divided into two main sections:

Two general chapters, offering an insight into tax and state aid, and tax in relation to the digital economy.

Country question and answer chapters. These provide a broad overview of common issues in corporate tax laws and regulations in 34 jurisdictions.

All chapters are written by leading corporate tax lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor William Watson of Slaughter and May for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Kosovo

Genc Boga



Alketa Uruçi



Boga & Associates

1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in your jurisdiction?

Kosovo, as an independent country, has concluded several new tax treaties, such as those with: (i) the Republic of Albania (2016); (ii) the Republic of Macedonia (2014); (iii) the Republic of Turkey (2016); (iv) Slovenia (2015); (v) the Czech Republic (published in the Official Gazette on 27 March 2015); (vi) the United Kingdom (2016); (vii) Hungary (2015); (viii) Republic of Croatia (2018); (ix) Switzerland (published in the Official Gazette on 17 August 2017, not yet applicable); (x) United Arab Empire (2017); (xi) Republic of Austria (published in the Official Gazette on 1 August 2018); and (xii) Grand Duchy of Luxembourg (published in the Official Gazette on 18 January 2018, not yet applicable). Kosovo has also acceded to other tax treaties on the avoidance of double taxation with respect to taxes on income and capital from the former Yugoslavia (with Germany, Belgium, the Netherlands and Finland, as well as with the Czech Republic for the avoidance of double taxation on inheritance tax).

1.2 Do they generally follow the OECD Model Convention or another model?

Kosovo tax treaties generally follow the OECD model.

1.3 Do treaties have to be incorporated into domestic law before they take effect?

The new tax treaties must be ratified by Parliament. A treaty ratified by Parliament becomes part of the Kosovo legal system after publication in the Official Gazette and prevails over any law which differs from the treaty's provisions.

1.4 Do they generally incorporate anti-treaty shopping rules (or "limitation on benefits" articles)?

The treaties do not incorporate anti-treaty shopping rules.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

A treaty prevails over domestic law regardless of whether the domestic legislation existed previously or is introduced subsequently to it.

1.6 What is the test in domestic law for determining the residence of a company?

The test of residence of a company is whether a company: (i) is established in Kosovo; or (ii) has its place of effective management in Kosovo.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

No, there are no documentary taxes in Kosovo.

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

Kosovo introduced VAT in 2001. A new Law "On VAT" entered into force on 1 September 2015. The standard rate of VAT is 18%; the reduced rate of VAT is 8%; and exports are zero-rated. The turnover threshold for registration purposes is set to EUR 30,000.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

The following activities are VAT-exempt:

- insurance and reinsurance transactions;
- financial services;
- the supply of postage stamps;
- the supply at face value of fiscal stamps and other similar stamps;
- betting, lotteries and other forms of gambling;
- the supply of land;
- the supply of houses, apartments or other accommodation used for residential purposes; and
- the leasing or letting of immovable property.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

Generally, taxpayers registered for VAT are entitled to recover the input VAT, provided that the VAT is charged in relation to their taxable activity. When taxpayers perform both taxable and exempt supplies, VAT may be partially reclaimed. VAT cannot be reclaimed

on certain recreation expenses and representation costs, and it is limited on expenses for passenger vehicles which are not used solely for business purposes.

2.5 Does your jurisdiction permit VAT grouping and, if so, is it “establishment only” VAT grouping, such as that applied by Sweden in the *Skandia* case?

No, Kosovo does not permit VAT grouping.

2.6 Are there any other transaction taxes payable by companies?

There is an excise tax which applies to a limited number of goods such as coffee, tobacco, alcoholic drinks, soft drinks, derivatives of petroleum, and motor vehicles used mainly for the transport of passengers.

2.7 Are there any other indirect taxes of which we should be aware?

Except for VAT and excise, there are no other indirect taxes.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

No, there is no withholding tax on dividends distributed from a Kosovo-resident company.

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Yes. There is withholding tax at a rate of 10% on royalties paid by a Kosovo company to a non-resident.

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

Yes, there is withholding tax at a rate of 10% on interest paid by a Kosovo company to a non-resident.

3.4 Would relief for interest so paid be restricted by reference to “thin capitalisation” rules?

No, there are no “thin capitalisation” rules or any similar rules.

3.5 If so, is there a “safe harbour” by reference to which tax relief is assured?

No, there is no such provision.

3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

There are no such rules in place.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

No, there are no other restrictions on tax relief for interest payments by a local company to a non-resident.

3.8 Is there any withholding tax on property rental payments made to non-residents?

Yes. There is a 9% withholding tax on property rental payments made to non-residents.

3.9 Does your jurisdiction have transfer pricing rules?

The Corporate Income Tax Law provides that the prices between related parties should be set at open market value. Such value should be determined under the uncontrolled price method, and when this is not possible, under the resale price method or the cost-plus method. Additional rules are provided in an administrative instruction.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

The Kosovo Corporate Income Tax Law provides for a rate of 10%.

4.2 Is the tax base accounting profit subject to adjustments, or something else?

The taxable base is calculated starting from the profit shown in the financial statements, and is adjusted in accordance with the limitations provided in the Corporate Income Tax Law.

4.3 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

The Corporate Income Tax Law provides a list of expenses that are non-deductible for tax purposes, consisting of:

- fines, penalties and interest imposed by any public authority and expenses related to them;
- income tax paid or accrued for the current or previous tax period and any interest or late penalty incurred for its late payment;
- any loss from the sale or exchange of property between related persons;
- pension contributions above the maximum amount allowed by the Kosovo Pension Law;
- bad debts that do not meet the specified conditions;
- contributions made for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes, which exceed 10% of taxable income (before the deduction of such expenses);
- representation costs (these include publicity, advertising, entertainment and representation) which exceed 1% of the total gross income; and
- accrued expense for which the withholding tax should be paid, unless such expense is paid on or before 31 March of the subsequent tax period.

4.4 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

No, there are no tax grouping rules.

4.5 Do tax losses survive a change of ownership?

As a general rule, the losses may be carried forward for six years, but they do not survive a change of more than 50% in ownership or a change in the legal form of the entity.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

No, there is no difference in this regard.

4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

Yes, there is a property tax in Kosovo. All persons who own, use or occupy immovable property are subject to tax on real estate. The Municipal Assembly of each Municipality shall set property tax rates for all property categories except for the public property category, at the rate of 0.15% to 1% of the market property value.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

The Corporate Income Tax Law indicates the rules applicable to capital gains. As a general rule, capital gains and losses are treated as ordinary income/losses from economic activity. Capital gains are not recognised for fixed assets which are depreciated in a pool and purchased prior to 1 January 2010.

5.2 Is there a participation exemption for capital gains?

No, there is no participation exemption for capital gains.

5.3 Is there any special relief for reinvestment?

No, there is no relief for reinvestment.

5.4 Does your jurisdiction impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

There is no withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares.

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

There are no taxes payable upon the formation of a subsidiary.

6.2 Is there a difference between the taxation of a local subsidiary and a local branch of a non-resident company (for example, a branch profits tax)?

There is no difference between the taxation of a locally formed subsidiary and the branch of a non-resident company.

6.3 How would the taxable profits of a local branch be determined in its jurisdiction?

Branches are taxed only on the taxable income from a Kosovo source of income. The taxable income is determined in the same manner as for resident companies. Taxable income of branches is subject to Corporate Income Tax at the same rate of 10%.

6.4 Would a branch benefit from double tax relief in its jurisdiction?

Branches have the same treatment under the local legislation.

6.5 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch?

No, there is no withholding tax or other tax with regard to the remittance of profits by the branch.

7 Overseas Profits

7.1 Does your jurisdiction tax profits earned in overseas branches?

Foreign-sourced income is taxable in Kosovo. However, tax credit is allowable for the amount of income tax paid overseas for the income derived abroad.

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

No, dividends distributed by a non-resident to a local company are considered as exempt income.

7.3 Does your jurisdiction have “controlled foreign company” rules and, if so, when do these apply?

There are no “controlled foreign company” rules.

8 Taxation of Commercial Real Estate

8.1 Are non-residents taxed on the disposal of commercial real estate in your jurisdiction?

Non-residents are taxed on the disposal of commercial real estate in Kosovo, at a rate of 10% of the realised profit.

8.2 Does your jurisdiction impose tax on the transfer of an indirect interest in commercial real estate in your jurisdiction?

There is no tax on the transfer of an indirect interest in commercial real estate located in Kosovo.

8.3 Does your jurisdiction have a special tax regime for Real Estate Investment Trusts (REITs) or their equivalent?

Kosovo does not have any special regime for REITs or their equivalent.

9 Anti-avoidance and Compliance

9.1 Does your jurisdiction have a general anti-avoidance or anti-abuse rule?

The Tax Procedure Law provides for the right of tax authorities to disregard and re-characterise a transaction or element of the transaction that does not have a substantial economic effect, where the form of the transaction does not reflect its economic substance and where it was entered into as part of a scheme to avoid a tax liability.

9.2 Is there a requirement to make special disclosure of avoidance schemes?

There are no requirements to disclose avoidance schemes.

9.3 Does your jurisdiction have rules which target not only taxpayers engaging in tax avoidance but also anyone who promotes, enables or facilitates the tax avoidance?

There are no such rules.

9.4 Does your jurisdiction encourage “co-operative compliance” and, if so, does this provide procedural benefits only or result in a reduction of tax?

There are no provisions encouraging “co-operative compliance”.

10 BEPS and Tax Competition

10.1 Has your jurisdiction introduced any legislation in response to the OECD’s project targeting Base Erosion and Profit Shifting (BEPS)?

Kosovo has not introduced any legislation in response to the OECD’s project targeting BEPS.

10.2 Does your jurisdiction intend to adopt any legislation to tackle BEPS which goes beyond what is recommended in the OECD’s BEPS reports?

There is no any expressed intention of Kosovo to adopt any legislation to tackle BEPS.

10.3 Does your jurisdiction support public Country-by-Country Reporting (CBCR)?

Kosovo does not support public CBCR.

10.4 Does your jurisdiction maintain any preferential tax regimes such as a patent box?

Kosovo does not maintain any preferential tax regimes.

11 Taxing the Digital Economy

11.1 Has your jurisdiction taken any unilateral action to tax digital activities or to expand the tax base to capture digital presence?

Kosovo has not taken unilateral action with regard to tax digital activities.

11.2 Does your jurisdiction support the European Commission’s interim proposal for a digital services tax?

Kosovo has not expressed support for the proposal for a digital services tax.

**Genc Boga**

Boga & Associates
27/5 Nene Tereza Str.
10000 Pristina
Kosovo

Tel: +383 38 223 152
Email: gboga@bogalaw.com
URL: www.bogalaw.com

Genc Boga is the founder and Managing Partner of Boga & Associates, which operates in the jurisdictions of both Albania and Kosovo. Mr. Boga's fields of expertise include business and company law, concession law, energy law, corporate law, banking and finance, taxation, litigation, competition law, real estate, environment protection law, etc.

Mr. Boga has solid expertise as an advisor to banks, financial institutions and international investors operating in major projects in energy, infrastructure and real estate. Thanks to his experience, Boga & Associates is retained as a legal advisor on a regular basis by the most important financial institutions and foreign investors.

He regularly advises EBRD, IFC and World Bank in various investment projects in Albania and Kosovo.

Mr. Boga is continuously ranked as a leading lawyer by major legal directories: *Chambers Global*; *Chambers Europe*; *The Legal 500*; and *IFLR1000*.

He is fluent in English, French and Italian.

**Alketa Uruçi**

Boga & Associates
27/5 Nene Tereza Str.
10000 Pristina
Kosovo

Tel: +383 38 223 152
Email: auruci@bogalaw.com
URL: www.bogalaw.com

Alketa is a Partner at Boga & Associates, which she joined in 1999.

She practises in the areas of concession and energy, where she manages energy assignments on any regulatory, corporate and commercial aspects, including international arbitration proceedings.

Alketa has extensive experience in providing regular tax advice to commercial companies, for corporate tax, VAT, employees' taxation matters, involvement in the management of several tax aspects of mergers and acquisitions transactions, tax planning and restructuring.

In addition, Alketa has assisted clients in their acquisitions of Albanian and Kosovo targets, including tax and legal due diligences, structuring of the acquisition transaction, assisting in the preparation of the transaction documents and the respective closing.

Alketa is fluent in English and Italian.

BOGA & ASSOCIATES

LEGAL • TAX • ACCOUNTING

Boga & Associates, established in 1994, has emerged as one of the premier law firms in Albania, earning a reputation for providing the highest quality of legal, tax and accounting services to its clients. The firm also operates in Kosovo (Pristina) offering a full range of services. Until May 2007, the firm was a member firm of KPMG International and the Senior Partner/Managing Partner, Mr. Genc Boga, was also the Senior Partner/Managing Partner of KPMG Albania.

The firm's particularity is linked to the multidisciplinary services it provides to its clients, through an uncompromising commitment to excellence. Apart from the widely consolidated legal practice, the firm also offers the highest standards of expertise in tax and accounting services, with keen sensitivity to the rapid changes in the Albanian and Kosovo business environment.

The firm delivers services to leading clients in major industries, banks and financial institutions, as well as to companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods.

The firm is continuously ranked as a "top tier firm" by major directories: *Chambers Europe*; *The Legal 500*; and *IFLR1000*.

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59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

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