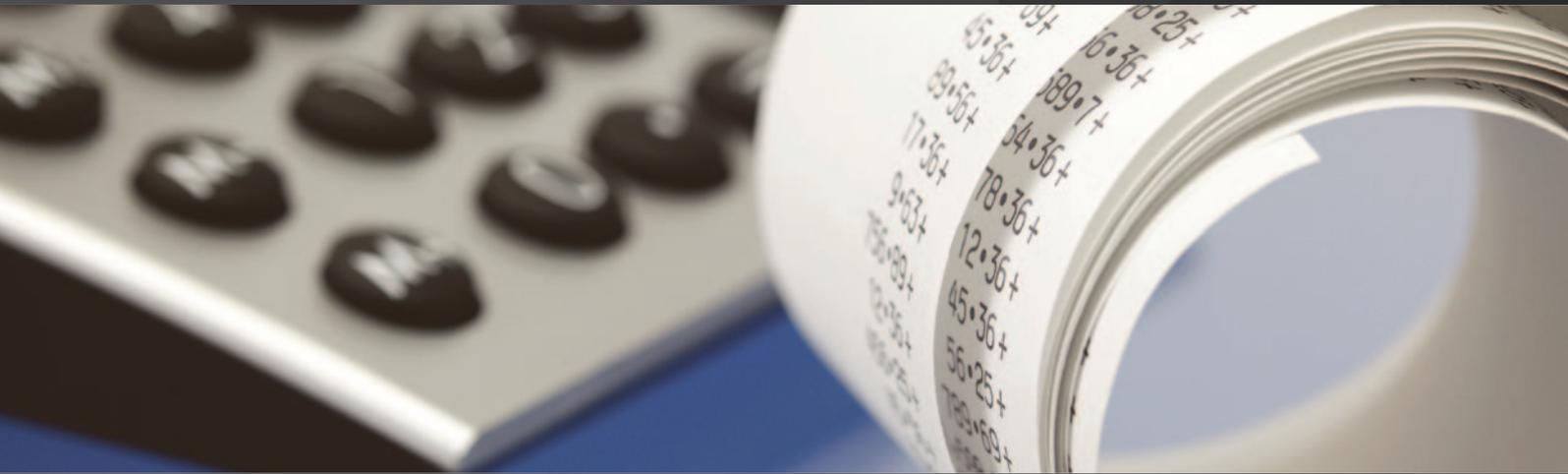


International Comparative Legal Guides



Corporate Tax 2020

A practical cross-border insight to corporate tax law

16th Edition

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Corporate Tax 2020

16th Edition

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Albania

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Alketa Uruçi

1 Tax Treaties and Residence

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

Albania has concluded tax treaties with 43 countries, 41 of which are currently in force.

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

Albanian tax treaties follow the OECD model.

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

The Albanian Constitution requires treaties to be ratified by Parliament.

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.

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

Entities that are established in Albania or have their place of effective management in Albania are considered resident.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

No, there are no documentary taxes in Albania.

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

VAT was first introduced in 1995. In 2015, the legislation was harmonised with the EU Directive on VAT. The standard rate of

VAT is 20%, which applies to all persons (companies and entrepreneurs) having an annual turnover exceeding ALL 2,000,000 (approx. EUR 16,700). Exceptionally, persons carrying out certain specific categories of activity (such as lawyers, notaries, architects, auditors, doctors, accountants and similar professions) are VAT taxpayers irrespective of their annual turnover (i.e. there is no VAT threshold). Accommodation in tourism facilities is subject to a reduced rate of 6%, as well as the supply of accommodation and restaurant services offered within "certified agritourism entities". In some exceptional cases, the reduced rate of 6% applies to the supply of all services offered within the accommodation facilities falling under the category of a "five-star hotel with special status".

A reduced rate of 6% also applies to advertising services from audio-visual media and the supply of books.

Exports of goods, goods in passenger baggage, the international transport of goods and passengers and related services, and services to international intra-governmental organisations, are subject to VAT at 0% (benefitting from VAT exemption but with a right of deduction).

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

VAT regulations provide for supplies exempt from VAT without a right of deduction. The most important are as follows:

- Lease and sale of land.
- Sale of buildings, unless the seller opts for VAT applicability.
- Long lease of buildings (when the lease duration exceeds two months), unless the lessor opts for VAT applicability.
- Financial services.
- Certain services rendered by not-for-profit organisations.
- Educational services rendered by private and public educational institutions.
- Public postal services.
- Import of raw materials used for the production and packaging of authorised medicines.
- Supply of newspapers, magazines and newspaper printing services.
- Supply of services performed outside Albania by a taxable person whose place of activity or residence is in Albania.
- Supply of services relating to gambling activities and casinos.
- Supply of services rendered by contractors and their subcontractors related to the exploration phase of hydrocarbon operations and import of goods during the exploration phase, when attested as such by the National Agency of Natural Resources.

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. VAT cannot be reclaimed on recreation and accommodation expenses, passenger vehicles, fuel under certain limits, or any expenses related to the above-mentioned expenses.

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?

There is no VAT grouping available in Albania.

2.6 Are there any other transaction taxes payable by companies?

There is a fee on the transfer of an ownership right on real estate, payable by legal entities in case of sale or donation of real estate.

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

Except for VAT and excise, carbon and circulation taxes are levied on the production and importation of certain combustible goods (including fuel) in Albania.

3 Cross-border Payments

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

Dividends and profit distribution paid to non-residents are subject to a final withholding tax at a rate of 8%, unless a double tax treaty provides for a lower rate.

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

Royalties paid to non-residents are subject to a final withholding tax at a rate of 15%, unless a double tax treaty provides for a lower rate.

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

Interest paid to non-residents is subject to a final withholding tax at a rate of 15%, unless a double tax treaty provides for a lower rate.

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

The thin capitalisation rule limits the tax deduction for interest paid on a loan (for corporate income tax purposes) to the portion of interest paid on the loan not exceeding four times the company's net assets (i.e. a debt-to-equity ratio of 4:1). The rule applies to all loans taken, except for short-term loans (payable within less than one year). It does not apply to banks, finance leases or insurance companies. Additionally, in case of loans and funding from related parties, the “net interest expense” will be considered deductible up to 30% of EBITDA (Earnings Before Interest, Tax, Depreciation and Amortisation). The taxpayer has the right to carry forward the non-deducted part of the interest and claim its tax deductibility in the subsequent periods, except when the taxpayer's ownership has changed by more than 50%.

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

There is no such provision in Albanian legislation.

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

The debt-to-equity ratio is calculated without taking into consideration the source of the financing or relevant guarantees. With regards to net interest expense as a percentage of EBITDA, there are no explicit rules stipulating the inclusion of third-party loans in the calculation.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident, for example pursuant to BEPS Action 4?

There are no such other restrictions.

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

Property rental payments made to non-residents are subject to a final withholding tax at a rate of 15%, unless a double tax treaty provides for a lower rate.

3.9 Does your jurisdiction have transfer pricing rules?

The legislation on transfer pricing is based on the Transfer Pricing Guidelines 2010 of the Organisation for Economic Co-operation and Development (OECD). However, in case of conflicts between the OECD Guidelines and provisions of the Albanian legislation on this matter, the local legislation provisions will prevail.

The legislation lays down the transfer pricing methods to be used by taxpayers when performing a controlled transaction, depending on the specifics of the transaction. The methods described are:

- the comparable uncontrolled price method;
- the resale price method;
- the “cost plus” method;
- the transactional net margin method; and
- the profit split method.

The method chosen by the taxpayer depends on, and should take into account, different circumstances. However, the legislation provides the option for the taxpayer to choose another transfer pricing method, if the taxpayer proves that none of the methods listed in the legislation can be used in a reasonable way to apply the market principles in the controlled transactions.

Taxpayers performing controlled transactions, as defined above, which exceed the amount of ALL 50,000,000 (approximately EUR 415,000), should present to the tax authorities (i.e. the General or Regional Tax Directorate where the taxpayer has been registered) an Annual Controlled Transactions Declaration, as per the format provided in the respective Instruction on Transfer Pricing.

In addition, in case the tax authorities of a country with which Albania has signed a double tax treaty make a transfer pricing adjustment that results in the taxation of the profit for which the taxpayer has already been taxed in Albania, the Albanian taxpayer may submit a written request to the General Tax Directorate on the respective adjustment to be made to the profit tax in Albania. The requested transfer pricing adjustments may be refused or granted fully/partially within three months of the date of the submission of the request by the taxpayer.

4 Tax on Business Operations: General

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

As of 1 January 2019, profits are taxed at a rate of 15% for the taxpayers having a total annual turnover higher than ALL 14,000,000, whereas the taxpayers having a total annual turnover from ALL 5,000,000 up to ALL 14,000,000 will be subject to a profit tax rate of 5%.

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

Yes, the taxable profit that results from the financial statements prepared under and pursuant to accounting standards is adjusted as provided for and required by the tax regulation.

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

The main adjustments consist of the following: depreciation allowances; restrictions related to thin capitalisation of loan interests and other expenses (e.g. thresholds of tax deductions for representation and sponsorship expenses); bad-debt requirements; penalties; provisions (except for banks and insurance companies); and impairment and revaluation of assets, etc.

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?

Losses are carried forward for three consecutive years (no carry back is allowed). However, if, during a taxable period, direct and/or indirect ownership of stock capital or voting rights of a person changes by more than 50% in value or number, the losses incurred in the previous years cannot be used against the profit of the year.

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?

Property tax is levied annually on all residents and non-residents who own agricultural land, buildings and “terrain” in Albania. Agricultural land is classified into 10 groups and is taxed at rates varying from ALL 700 to ALL 5,600 per hectare. Buildings, from 1 April 2018, are taxed based on the market value of the building (previously, a fixed amount for each square metre).

The tax rate varies: from 0.05% for buildings used as a dwelling; to 0.2% for buildings used for economic activity; and to 30% of the respective tax amount for the entire building, if the developer failed to complete the construction within the deadline set forth in the construction permit. The tax on buildings is paid each month.

“Terrain” (defined in law as land available for building upon) is taxed at ALL 0.14 to ALL 20 per m².

The local municipality may modify the tax rates set by law. In addition, it decides on the payment schedule of the tax and on reductions for immediate payment of tax.

Albanian legislation also provides for the tax on impact on infrastructure from new constructions (infrastructure tax). In cases of residence or business units, the tax varies from 4% to 8% of the sale price of such units. For constructions in the field of tourism, industry or for public use, the tax varies from 2% to 4% in Tirana and from 1% to 3% in other municipalities. Exceptionally, for infrastructure projects such as the construction of national roads, ports, airports, tunnels, dams or, energy infrastructure, the tax is 0.1% of the investment value (which includes the value of equipment and machinery for the project), but not less than the cost of rehabilitating any damaged infrastructure to be replaced.

In addition, there are a variety of national and local taxes. These include hotel tax, royalty tax, advertising tax, etc.

5 Capital Gains

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

The provisions for taxing capital gains and losses have changed as of 1 January 2019.

As a general rule, capital gains are included in the business profit of the entity and are taxed at the rate of 15%. In case of non-residents, they shall file a tax return with the Albanian tax authorities to declare and pay capital gain at the rate of 15%.

Exceptionally, when certain conditions are fulfilled, the tax liability is shifted to the company whose shares are being transferred.

Specifically, according to the new legislation, if direct and/or indirect ownership of stock capital or voting rights of a legal person changes by more than 20% in value or number, and the average annual turnover of this person for the last three years exceeds ALL 500 million (approx. EUR 4.2 million), the person is treated as disposing of a proportionate part of all the person's assets immediately before the change. The person is treated as:

- receiving sales proceeds for the disposal equal to the proportionate part of the market value of the asset at that time; and
- reacquiring the asset for the same amount.

The quantum of sales proceeds treated as received are reduced by the proportional cost of the asset to determine a gain or loss on the deemed disposal of the asset. If there is a gain, the gain will be included in calculating the income of the entity for the year in which the deemed disposal occurs. If there is a loss, the loss will be deductible (except for the case when more than 50% of ownership change is triggered).

The law states that where a legal person pays profits tax under this law because of paragraph 1), any disposal of shares or comparable interests that caused the change is exempt from profits tax.

In addition, the new provisions have introduced a notification requirement for the legal entity whose shares are being transferred.

5.2 Is there a participation exemption for capital gains?

Tax legislation does not provide for a participation exemption for capital gains.

5.3 Is there any special relief for reinvestment?

There is no rollover relief available in Albania, or any other relief.

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 the sale of interest in assets/shares, but the seller must declare and pay the tax on income generated from the transaction.

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 subsidiaries.

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 are no such differences in taxes or fees specifically designed for subsidiaries. The taxable income of branches is subject to profit tax at the same rate (15%) as any Albanian entity.

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

Branches are taxed only on taxable income from an Albanian source. Taxable income is determined in the same manner as for resident companies.

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

Branches are considered permanent establishments; hence they may benefit from double tax relief.

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

Transfers or repatriation of profits by the branch are not subject to any tax in Albania.

7 Overseas Profits

7.1 Does your jurisdiction tax profits earned in overseas branches?

Foreign-sourced income is taxable in Albania. However, tax credit is allowable for the amount of income tax paid overseas for the income derived abroad up to the amount that would have been payable in Albania on Albanian-sourced income.

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

Receipt of dividends is tax-exempt income in Albania.

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

No, 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 real estate in Albania, at a rate of 15% 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?

Current legislation does not provide for indirect interest taxation.

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

Under current legislation, there is no special tax regime for REITs or their equivalent in Albania.

9 Anti-avoidance and Compliance

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

Albanian fiscal legislation does not provide for a general anti-avoidance rule. However, it gives the tax authorities the right to use alternative methods of tax assessment when verifying the lack of economic substance in a transaction.

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

Under current legislation, there are no requirements to disclose any avoidance scheme.

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?

Albanian legislation does not have specific rules to target parties other than the taxpayer committing the tax avoidance.

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?

The Tax Procedure Law requires co-operative compliance before the tax audit commences. Taxpayers are entitled to review the tax returns before a tax audit takes place; this results in lower penalties.

10 BEPS and Tax Competition

10.1 Has your jurisdiction introduced any legislation in response to the OECD's project targeting BEPS?

The Albanian Government has indicated that the additional thin capitalisation rule, i.e. net interest expense to EBITDA, will be introduced in response to OECD's project (BEPS).

10.2 Has your jurisdiction signed the tax treaty MLI and deposited its instrument of ratification with the OECD?

Albania has signed the MLI. In addition, the Albanian parliament has ratified it, but the instrument of ratification has not yet been deposited with the OECD.

10.3 Does your jurisdiction intend to adopt any legislation to tackle BEPS which goes beyond the OECD's recommendations?

There are no publicly expressed intentions to adopt any legislation beyond the OECD's recommendations.

10.4 Does your jurisdiction support information obtained under Country-by-Country Reporting (CBCR) being made available to the public?

No, CBCR-obtained information is not made available to the public.

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

There are no preferential regimes in Albania.

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?**

No, there is no action to tax digital activities in Albania. Neither is there an initiative to tax digital presence.

11.2 Does your jurisdiction favour any of the G20/OECD's "Pillar One" options (user participation, marketing intangibles or significant economic presence)?

No, Albania does not favour these options.



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Boga & Associates, established in 1994, has emerged as one of the premier law firms in Albania and Kosovo, earning a reputation for providing the highest quality of legal, tax and accounting services to its clients. 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.

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