

Dear reader,

In this issue we have reported recent developments to Albanian Civil Code, social and health contributions, accounting standards, merger control and tax matters. Initiatives undertaken by Kosovar government on electronic communications, are reported as well.

Under the editorial "Article" we present an overview of bilateral tax conventions ratified by Kosovo parliament.

#### RECENT DEVELOPMENTS

##### *Albania*

- *Civil Code to redefine non material damage*
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#### ARTICLE

- *Kosovo bilateral tax agreements ratified*

We hope you enjoy reading this issue, and will be glad to welcome any of your queries should they arise in relation to the topics herein contained.

## RECENT DEVELOPMENTS

### Albania

- *Civil Code to redefine non material damage*

On 16 February, 2012 the Albanian Parliament adopted the Law no.17/2012 “On some additions and amendments to Law no. 7850, dated 29.07.1994 “The Civil Code of the Republic of Albania” as amended” (the Code). Law no. 17/2012 is effective as of 29 March, 2012.

Law no. 17/2012 amends, *inter alia*, article 625 of the Code, which provided previously for the right of a person to claim for remedy in case of suffering a non material damage i.e. (i) injury to health or infringement of the right to honor or personality; (ii) violation of the memory of the deceased.

Under Law no. 17/2012, apart of the above-mentioned, the person who suffers a non material damage is now entitled to remedy in case of:

- (i) injury to physical or mental integrity;
- (ii) infringement of the right to a name;
- (iii) infringement of the right to reputation;
- (v) infringement of the right of private life.

Remedy of non material damages caused by infringement of a person’s right to honor or personality or reputation aims to restore the infringed right. Awarded compensation is proportionate with the damage suffered and is determined upon due evaluation of specific circumstances of the case by the court.

As regards the statute of limitation, Law no. 17/2012 states that actions for relief of non material damage caused by infringement of a person’s right to honor, personality or reputation must be commenced within one year.

- *Examination of claims in the concession process to be amended*

On 22 February, 2012 the Council of Ministers approved Decision no. 121 “On some Amendments to Decision no. 469, dated 16.06.2010 (“On the Approval of the Regulation on Determination of Detailed Rules on the Procedure of Examination of Claims against the Concession Procedures or Against Decisions for Expulsion from such Procedures”) and to Decision no. 27, dated 19.01.2007 “On Approval of Rules for the Evaluation and Award of Concessions”.

Decision 121/2012 provides for a change to the general rules governing examinations of claims in the concession process according which, for each claim, the chairman or (in his/her absence) the vice chairman of the Commission of Public Procurement assigns (randomly) three members in charge for reporting the claim, and propose a decision to the Commission.

- *Additional documents to be presented for obtaining the environmental permit*

On 9 February, 2012 the Minister of Environment, Forestry and Water Administration issued Instruction no. 2/1 amending and supplementing Instruction no. 2, dated 26.06.2010 “On the documentation required for issuance of environmental permits”.

Instruction no. 2/1 has been published in the Official Gazette no. 21, dated 20.03.2012 and has entered into force upon publication.

The purpose of the Instruction is to regulate the regime of environmental permits issued subject to article 40 (currently abrogated) of Law no. 8934/2002 “On environment protection” as amended.

According to article 40 of the Law no. 8934/2002 environmental permits issued with regard to activities involving the exploitation of minerals or other natural resources should be renewed every three years. Whilst environmental permits concerning any other activities, should be renewed every five years.

In order to fill in any normative gap created following the abrogation of article 40 of Law no. 8934/2002 and upon expiry of the term of the permits issued under the said article 40, the Minister of Environment, Forestry and Water Administration supplemented the existing Instruction no. 2, dated 26.06.2010 with provisions applicable to expired permits.

- *Territory development regulations amended*

- Decision of Council of Ministers no. 139, dated 22.02.2012 “On some additions to the decision of Council of Ministers no. 502, dated 13.07.2011 “On the approval of the uniform regulation on development control of the territory”, as amended.

Although Decision 502/2011 is relatively new, the legislator deemed necessary to intervene again in order to address some issues related to the construction permits issued based on the provisions of the former Urban Planning Law and decisions attributed to the former Council of Territory Adjustment of the Republic of Albania – CTARA (i.e. replaced by the National Territory Council).

As above, any natural person or legal entity willing to renew their environmental permit, should submit near the National Licensing Center the following documentation:

- (i) Request for issuance of the environmental permit supported also by notarized copy of the expired environmental permit;
- (ii) Description of the activity or project indicating also the project features, project location, eventual impacts that the activity/project might have on environment and health;
- (iii) Extract from the Albanian Commercial Register with regard to the entity applying for issuance of the permit; and
- (iv) Environmental impact assessment report drawn up by certified experts.

It is provided that the decisions of the CTARA adopted before the entrance into full force of the Law on Territory Planning will remain into force, whilst the permits for construction works issued based on such decisions will follow the provisions of the new Law on Territory Planning.

Other significant amendment to the Decision 502/2011 regards the possibility awarded to subjects to require a one time extension of the term of the construction permits which, were issued before the entrance into full force of the Law on Territory Planning, and have already expired or are about to expire.

The extension of the term will be granted only to those subjects who have not changed the initial construction plan.

Moreover, the investors holding a construction permit issued following provisions of the former Urban Planning Law, are entitled to change the constructor only once but in no case the initial construction plan should have been changed.

- Decision of Council of Ministers no. 140, dated 22.02.2012 “On some additions to the decision of the Council of Ministers no. 480, dated 22.06.2011 “On the approval of the model regulation on planning” as amended.

Decision 480/2011 has undergone minor amendments.

The legislator has provided for two substantial amendments to the said decision.

- ***New amendments to social and health contributions***

Law no. 10/2012, dated 09.02.2012 “On Some Changes to Law no. 9136, dated 11.9.2003 “On Collection of Obligatory Social and Health Contributions” has introduced some new requirements for the employers and sole entrepreneurs.

Legal persons should declare with the tax administration, within two working days from the registration with the National Registration Centre, the list of employees indicating their monthly salary. The sole entrepreneurs are also required to provide this information for the employees and unpaid family members involved in the business activity.

Furthermore, the employers are required to provide to the employees, within the calendar year, an official document stating the salary, personal income tax as well as social and health contributions paid for each month.

- ***Changes to the International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS)***

In pursuance with the provisions of the Accounting Law and Decision no. 4, dated 26.12.2011 of National Accounting Council, the Minister of Finance has approved Order no. 3, dated 10.01.2012 which makes effective the changes in IAS-s and IFRS-s occurred during the years 2010 and 2011.

The changes refer to the following standards:

- IAS 27 – Individual Financial Statements;
- IAS 28 - Investments in Associates and Joint Ventures;
- IFRS 9 – Financial Instruments.

The first establishing that the decisions adopted by the Council of Territory Adjustment of the Republic of Albania, remains a binding instrument for local government along with the regulation set out by the decision with regard to the issuance of the permits for construction works.

The second amendment relates to the issuance of permits on construction works by the local government in the ambit of the important infrastructure projects. To this end, the decision states that the local government in issuing the permits on construction works for important infrastructure projects should not affect the existing use of the land and/or facilities implemented with public or private investments.

- *New guideline of the Competition Authority on merger control rules*

Albanian Competition Authority has recently published a new Guideline “On Control of Concentrations between Undertakings” (“the Guideline”). The draft is now being circulated for comments.

The purpose of the Guideline is the determination of rules to be applied in evaluating and analyzing concentrations notified to the Albanian Competition Authority pursuant to the provisions of Law no. 9121, dated 28.07.2003 “On Protection of Competition” (“the Law”).

Under the Law, a concentration shall be deemed to arise where a change of control on a lasting basis results from: (i) the merger of two or more previously independent undertakings or parts of undertakings; or (ii) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings; (iii) direct or indirect control of one or more previously independent undertakings or parts of undertakings. “Control” shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by (i) ownership or the right to use all or part of the assets of an undertaking; (ii) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

Differently from the existing Albanian secondary legislation (which contain procedural rules only), the Guideline explains further the key legal concepts set forth in the Law. It focuses on, inter alia, (i) the concept, means and object of “control”, (ii) the issue of a change of control on a lasting basis,

(iii) the problem of interrelated transactions, (iv) the questions on internal restructuring, (v) the difference between sole and joint control, (vi) the notion of “*undertakings concerned*”, (vii) net turnover calculation and financial accounts, (viii) attribution of turnover principles (ix) geographical allocation of turnover etc.

The Guideline provides that the acquisition of control over assets can only be considered a concentration if those assets constitute the whole or a part of an undertaking, *i.e.* a business with a market presence, to which a market turnover can be clearly attributed. Even the transfer of the client base of a business can fulfill these criteria if this is sufficient to transfer a business with a market turnover.

In explaining means of control the Guideline introduces the novel concept of a “*control acquired with other means*”. Economic relationships may lead to acquisition of control. This may be the case e.g. where in exceptional circumstances, a situation of economic dependence arises and gives grounds to a *de facto* control. as an example, important long-term supply agreements can lead to a *de facto* control.

The Guideline also clarifies that, as a rule, a concentration does not result from a temporary change of control. However, a change of control on a lasting basis is not excluded by the simple fact that the underlying agreements are entered into for a definite period of time, provided that those agreements are renewable. A concentration may arise even in cases in which agreements provide for a definite end date, if the period is sufficiently long to lead to a lasting change in the control over the undertakings concerned.

- *Payment of mining royalty subject to new rules and procedures*

Any natural or legal person, licensed or operating in the mining industry based on a contractual relationship with the Ministry of Economy, Trade and Energy is subject to payment of the “mining royalty”.

This royalty is paid for minerals that are extracted above or beneath the ground of the Albanian territory, as well as for byproducts produced from these minerals.

The mining royalty for local sales is considered to be a monthly obligation of the taxpayer, holder of the exploitation permit. The payment is done at the regional tax directorates, where the taxpayer is registered. In export, the royalty is paid at the customs authorities.

The taxable base of the royalty in case of minerals is the selling price of the minerals.

Regarding the sale of products or byproducts that were used as raw materials domestically, only the value of the mineral(s) used for manufacturing the product or byproduct will be considered for the calculation of the royalty.

For exported products/byproducts, the exporters should pay the royalty tax to the customs authorities for the mineral used in the production of the products. If the exporter has purchased the mineral from a licensee (who has already paid the royalty tax), then the exporter is entitled to be reimbursed. The reimbursement should take place within 30 days from the submission to the tax authorities of the request.

The reference values of minerals for purposes of calculation of the royalty tax due on products/byproducts that use minerals as raw materials, shall be published by an ad-hoc commission, established by order of the Minister of Finance.

- *Deadline for reassessment of real estate property extended*

The deadline for the reassessment of real estate property at market value, by any interested owner (individuals), is extended to 31 August, 2012.

## **Kosovo**

- *Draft of the New Law on Electronic Communication*

Kosovo Parliamentary Commission on Economic Development, Infrastructure, Trade and Industry has submitted to Kosovo Parliament a draft Law on Electronic Communication for approval (“the Law” or “Electronic Communication Law”).

The Law abrogates Law no. 2002/7, “On Telecommunications” and Law no. 03/L-085, “On Amending Law on Telecommunications”.

This Law shall regulate social relations pertaining to electronic communications networks and services, associated facilities and services, use of electronic communications resources as well as social relations pertaining to radio equipment, terminal equipment and

electromagnetic compatibility; it also ensures an equivalent level of protection of rights to personal data, and in particular the right to privacy, with respect to the processing of personal data in the electronic communication sector.

The law aims to promote the objective of regulating electronic communications activities in Kosovo within the EU regulatory framework.

The Ministry of Infrastructure (the “Ministry”) and Regulatory Authority of Electronic and Postal Communications (the “Authority”) are empowered by the Law to define policies in the field of electronic communication and draft the secondary legislation related to this sector.

The Authority shall promote effective competition ensuring conditions for every category of users of the electronic communication services.

Once approved by the Parliament the Law shall enter into force 15 days after its publication in the Official Gazette of the Republic of Kosovo.

## ARTICLE

### *Kosovo bilateral tax agreements ratified*

Contributed by Fitore Mekaj as first published in ILO

Although Kosovo declared its independence from Serbia in 2008, the tax authorities have not officially abolished the tax treaties that were signed by the former Yugoslavia. On the other hand, the Kosovar tax authorities have not accepted the direct application of these tax treaties.

In the past few years, Kosovo and several European countries have enacted several agreements signed by the former Yugoslavia. The president of Kosovo has signed the respective decrees for the approval of these agreements, including double taxation treaties. In practice, there are still uncertainties with regard to the initial date of their application.

The president has ratified by decree the following double taxation treaties signed by the former Yugoslavia:

(i) agreements for the avoidance of double taxation with respect to taxes on income and capital that were entered into with:

- the United Kingdom (published in the *Official Gazette* on September 6, 2010);
- Germany (published in the *Official Gazette* on September 8, 2011);
- Belgium (published in the *Official Gazette* on April 2, 2010); and
- Finland (published in the *Official Gazette* on September 8, 2011); and

(ii) an agreement with the Czech Republic for the avoidance of double taxation on inheritance tax (published in the *Official Gazette* on April 4, 2011).

Since independence, Kosovo has entered into double taxation treaties for the avoidance of double taxation with respect to taxes on income and capital with Albania (effective January 1, 2006) and Macedonia (effective April 13, 2012).

The government's main objective in enacting the double taxation treaties is to promote foreign investment and economic trade between Kosovo and other countries.

The table below lists the tax rates applicable under double tax treaties.

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Country	Dividends		Interest	Royalties
	Qualified companies	Others		
Albania	10%	10%	10%	10%
Macedonia	-	5%	10%	10%
Belgium	10%	15%	15%	10%
Finland	5%	15%	-	10%
Germany	15%	15%	-	10%
United Kingdom	5%	15%	10%	10%

# BOGA & ASSOCIATES

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## Boga & Associates

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The firm maintains its commitment to quality through the skills and determination of a team of attorneys and other professionals with a wide range of skills and experience. The extensive foreign language capabilities of the team help to ensure that its international clientele have easy access to the expanding Albanian and Kosovo business environment.

With its diverse capabilities and experience, the firm acts for leading businesses in most major industries, including banks and financial institutions, as well as companies working 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 sectors.