

Dear reader,

In this issue we have reported recent developments to Albanian legal framework on Tax and Concessions, as well as recommendations of the Albanian Competition Authority in the field of energy and public procurement. We also report on Kosovo new labour law.

Under the editorial “Article” we have presented to you an overview of Kosovo corporate income tax law.

RECENT DEVELOPMENTS

Albania

- *New amendments to Albanian tax legislation*
- *Ratification of new Convention on avoidance of double taxation of income and capital*
- *Minister of Economy, Trade and Energy instructs on certain rules regarding the concession agreements on construction and operation of hydropower plants*
- *Albanian Competition Authority recommends measures aiming to an efficient protection of competition in the energy market and in the public procurement procedures*

Kosovo

- *A new Labour Law in Kosovo*

ARTICLE

- *New Corporate Income Tax Law makes further changes*

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

- *New amendments to Albanian tax legislation*

The Albanian Parliament has passed new laws amending the Income Tax Law, VAT legislation, Local Taxes Law, Gambling Law and Excise Law. Below you will find a summary of the new amendments.

Income Tax Law

Upon law no. 10343, dated 28.10.2010, the following amendments have been approved (effective starting from January 1, 2011):

- Income from gambling activities and casinos are taxable at 10% rate (the same provision is inserted in the Gambling Law through law no. 10351, dated 11.11.2010);
- Voluntary pension contributions are tax deductible for purposes of calculation of the profit tax up to the limit set forth by law provisions (according to Law “On Voluntary Pension Funds”, the limit is Leke 250,000 per year for each employee);
- Individuals and self-employed persons (subject to local tax on small business) are required to submit to the tax authorities the Annual Tax Return, within 30 April of the following year (the first tax return shall be filed for the income perceived during the year 2011).

The following persons are not required to submit the Individual Annual Tax Return:

- a) individuals that realize an annual income up to Leke 200,000;
- b) self-employed individuals that realize an annual turnover up to Leke 2,000,000;
- c) all those persons that during the year realize income only from the employment relationship (i.e. salary, being subject to the personal income tax transferred to the tax authorities by the employer) or pension income.

The Annual Tax Return may also be voluntarily filed by any person who is not obliged to do so, but seeks to benefit from the tax deductibility scheme determined in the new law. Individuals that realize an annual income of more than Leke 800,000 do not benefit from the said scheme.

The Minister of Finance shall issue a specific instruction to introduce rules for implementation of the provisions on individual income tax declaration.

Law no. 10364, dated 16.12.2010 provides for the following amendments (effective as of January 24, 2011):

- Foreign and local dividends and profit sharing distributed to resident companies (subject to profit tax) shall not be taxable (with profit tax) at the hand of the recipient (irrespective of the quota of participation of the recipient in the entity distributing the dividend/profit);
- Provisions raised by banks shall be considered as tax deductible expenses, provided that they are created pursuant to the International Financial Reporting Standards and the external auditors have issued an unqualified opinion on them. In addition, the provisions created from banks in excess of minimum requirements on bad debt provisions established by the Bank of Albania are not deductible;
- Taxpayers shall recognize as tax deductible the expenses incurred by them in relation to employees' life and health insurance. The said contributions are also not taxable income to the employee benefiting from them;
- The taxpayer may request at any moment during the fiscal year the reduction of the profit tax prepayments.

If the amount of annual profit tax due exceeds the amount of profit tax prepayments made during the year by more than 10%, the taxpayer should pay interest for late payment over the difference. The Minister of Finance will issue an instruction to provide for detailed rules for the application of this provision.

VAT legislation

Effective from January 30, 2011, the supply of medicaments and health services by public and private health institutions shall be subject to VAT at the rate of 10%.

Decision of Council of Ministers no. 18, dated 12.01.2011 provides that the following categories of taxpayers shall be registered for VAT purposes, independently from their annual turnover: lawyer, notary public, specialized doctor, dentist, specialized dentist, pharmacist, nurse, midwife, veterinarian, architect, engineer, doctor of medical laboratory, designer, economist, agronomist; authorized auditor, certified accountant; property appraiser and hotel services.

- ***Ratification of new Convention on avoidance of double taxation of income and capital***

Recently, the Albanian Parliament has ratified the Tax Convention on avoidance of double taxation of income and prevention of fiscal evasion entered into between Albania and Spain. The Convention has not entered in force yet.

- ***Minister of Economy, Trade and Energy instructs on certain rules regarding the concession agreements on construction and operation of hydropower plants.***

Following the decision of the Council of Ministers no. 448, dated 16.06.2010 “On Some Amendments to the Decision of the Council of Ministers no. 27, dated 19.01.2007 “On the Approval of Rules for the Evaluation and Granting of the Concessions” (“the Decision”), the Minister of Economy, Trade and Energy has issued a new instruction (no. 873, dated 13.12.2010), published in the Official Gazette no. 172, as of 22.12.2010 (“the Instruction”).

Local Taxes Law

Law no. 10354, dated 18.11.2010 has introduced an amendment to the Local Taxes Law (law no. 9632/2002) regarding advertisement tax.

Advertisement tax for billboards having a surface up to 18 square meters shall continue to be calculated per square meter per year (at the same tariffs currently in force), while for billboards with a surface exceeding 18 square meters, the tax consists of a fixed amount (i.e. it does not vary from the surface of the billboard).

Excise Tax

The Excise Tax Law (law no. 8976/12.12.2002) has been amended upon law no. 10365, dated 16.12.2010, pursuant to which the excise tax rate for cigarettes containing tobacco shall be increased from Leke 50 per pack to Leke 70 per pack. This amendment is effective commencing from January 24, 2011.

As highlighted previously, the Decision provides for the new timelines for obtaining relevant permits and preparing the implementation project by the concessionaire (in the context of concession agreements for construction and operation of hydropower plants; for more information refer to “In Focus” no. 02/2010).

The Instruction clarifies and instructs on the calculation of the said terms.

Pursuant to point 8 of the Instruction, the new terms shall be calculated starting from the expiration date of the deadline set forth in the concession agreement for commencement of the operation of the hydropower plant.

The new terms within which the relevant permits should be obtained shall be:

- 12 months for hydropower plants with an installed capacity up to 5 MW;

- 18 months for hydropower plants with an installed capacity from 5 MW up to 20 MW;
- 24 months for hydropower plants with an installed capacity over 20 MW.

- ***Albanian Competition Authority recommends measures aiming to an efficient protection of competition in the energy market and in the public procurement procedures***

Albanian Competition Authority (ACA) has assessed recently the level of competition over the energy market and in the public procurement procedures. Specifically, through its decision no. 159, dated November 19, 2010, aiming to increase the competition in the electricity market, ACA has recommended to the Ministry of Economy, Trade and Energy and to the Energy Regulatory Entity to undertake measures towards: the effective functional and financial division of the Wholesale Public Supplier from KESH-Gen (electricity producer); the effective financial division of the Distribution System Operator from the Retail Public Supplier and the speeding up of the process of review of the contract between tariff customers and the Retail Public Supplier.

On November 12, 2010 ACA has recommended to the Agency of Public Procurement, Council of Ministers and Albanian Parliament to amend the Public Procurement Law by adding a new provision on expulsion of a bidder from the procurement procedures for a period of 1 to 3 years if ACA has decided that this bidder has participated to prohibited agreements with other bidders. Further, ACA has recommended to the Public Procurement Agency to cooperate with ACA for drafting and adopting a joint instruction on prevention of agreements in the process of bids under a public procurement procedure and the guide on procedures for detecting such agreements.

Kosovo

- *A new Labour Law in Kosovo*

Kosovo Parliament has passed a new Labour Law, which was published on December 1, 2010 in the Official Gazette no. 90 and entered in force on December 15, 2010 (“the Law” or “Labour Law”).

The Labour Law abrogates UNMIK Regulation no. 2001/27, “On the Essential Labour Law in Kosovo”; Law “On Work Relationship of Autonomous Socialist Province of Kosovo” of the year 1989 and the Yugoslav Labour Law, as amended.

The Labour Law incorporates, *inter alia*, principles and rules similar to those set out in the UNMIK Regulation no. 2001/27, such as the anti-discrimination principle; freedom of trade-union organization; the right to strike; collective contract; the minimum age of employees; type of labour contracts; maximum working hours (i.e. 40 hours per week); weekly rest (at least 24 consecutive hours); unilateral termination of employment relationship (cases of termination, procedure, severance payments); temporary suspension of employee from work; collective dismissal (justified for economic, technical or organizational reasons).

The Law obliges the employer to report the employee at the Kosovo Tax Administration (KTA) and the Kosovo Trust Agency (the institution that administers the obligatory pension schemes).

The employer from the private sector is not obliged to publish a public announcement for a job vacancy, since this obligation is only for public sector.

Below are listed the most important new rules introduced by the Law:

Probation period and part-time job. The parties may agree on a probation period, which shall not exceed 6 months. During the probation period, the employer and employee may terminate the employment relationship upon a notice of 7 days.

Employees may be engaged to conduct a part-time job under a definite or indefinite term contract.

Working Hours and Overtimes. Employees are entitled to one day rest between two continuous days of work lasting for at least 12 consecutive hours. Overtime is set at a maximum of 8 hours per week. Overtime is subject to a monetary or time off compensation consisting of 20% of the basic salary per hour for extra shifts; 30% of the basic salary per hour for night shifts; 30% of the basic salary per hour for extended working hours (overtime); 50% of the basic salary per hour for work on national holidays and weekends.

Leaves and Absence from Work. The Law provides for the following new rules on annual leave:

- newly hired employees having worked for at least 6 continuous months are entitled to a paid annual leave in proportion with the months of work;
- after the first year of employment, the employees are entitled to a paid annual leave of at least 4 weeks during the calendar year, regardless whether employment is full or part time;
- annual leave shall be taken no later than 30 June of the following calendar year.

Other paid leaves consist of:

- 2 days for the father in case of birth or adoption of a child;
- 5 days in case of employee’s marriage;
- 5 days in case of death of the close family member;
- 1 day in each case of voluntary blood donation.

Further, in case the work conditions are not satisfactorily secured or fail to protect the health and life of the employee, as set forth in a decision of the authorized state body or employer’s body, the employee shall be entitled to a paid justified absence from work for a maximum period of 45 days within a calendar year.

Unpaid leaves comprise the following:

- an indefinite period based on a request of the employee to the employer;
- 2 weeks for the father after the birth or adoption of the child, granted at any time before the child reaches the age of 3 years (upon 10 days prior notification to the employer).

Maternity leave. Pregnant women are entitled to 12 months of maternity leave to be taken upon a medical certificate 45 days before giving birth or, if consented by the woman, 28 days before the expected childbirth. The first 6 months of maternity leave are compensated with 70% of the salary payable by the employer, the consecutive 3 months are compensated with 50% of the salary payable by the Government of Kosovo and the last 3 months are not subject to monetary compensation. Before the entry into force of the new Law, maternity leave consisted of 12 weeks entirely payable from the employer at the amount of 2/3 of the salary.

Sick leave. During an ordinary sick leave, the employee shall be entitled to perceive its entire salary for a period of leave up to 20 working days within 1 year, while for occupational injury and related illness (e.g. accident at work) the payment shall consist of 70% of the salary. Payment for compensation for sick leave binds on the employer. It is to be noted that the forthcoming legislation on care and protection of health may provide for additional or other rules on the subject matter.

Employment contract types. The new Law introduces the following rules on the types of contracts:

- Employment contract for specific tasks and duties

This type of contract may not last more than 120 days within a year. The employee does not enjoy the right to annual leave and other rights stipulated in the collective contract.

- Definite term contract

This contract may not be concluded for a cumulative period of more than 10 years. If explicitly or tacitly renewed beyond this term, the contract shall be deemed with indefinite duration.

- Employment contract for professional training

Employer may engage individuals for professional training and performing certain tasks through practical work (i.e. internship relation). The practical work of an intern with university and post-graduate qualification shall not last more than 1 year, whereas the practical work of an intern with secondary education shall not last more than 6 months.

If agreed by the parties, the interns shall not be subject to any salary or other rights deriving from the employment contract (except for the duties of the employer to ensure application of safety rules to these interns). Employers who engage the interns without compensation of a salary shall be obliged to evidence this fact accordingly.

Health and safety at work. Women, persons under 18 years old and disable persons enjoy special protection under the new Labour Law. Specifically, persons less than 18 years old should not work under conditions which, given their nature or circumstances, damage the health, safety or the moral of the employee. While, pregnant and breastfeeding women shall be prohibited to conduct labour activities that are classified as harmful for the health of the mother or the child. Pregnant women, mothers with a child under the age of 3 years or a child with serious disability shall not be obliged to perform overtimes on night shifts. Maternity rights may be exercised from the father in case of sickness, abandoning of the child and/or death of the mother.

An employee that suffers a disability shall be entitled to work in his position or other relevant tasks, if he may perform the duties without the need for professional rehabilitation. The employer is obliged to ensure the adequate type of work for the employee professionally rehabilitated after the recovery.

Transfer of employees. Employees may be transferred in other job positions, with or without their prior consent, subject to certain rules set forth under the new Law.

New Kosovo Corporate Income Tax Law makes further changes

Contributed by Mirjeta Emini and Andi Pacani

Over the past few years the corporate income tax legislation has been amended several times. Since January 1, 2010 corporate taxation has been governed by the Corporate Income Tax Law (03/L-162) which replaced Law 03/L-113, enacted on January 1, 2009.

Company taxation

In addition to corporations and business organisations that are established as legal entities under the Commercial Law, the following entities are subject to the Corporate Income Tax Law:

- business organisations operating with public or socially owned assets;
- not-for-profit organisations; and
- permanent establishments of non-resident persons.

All taxpayers should prepare annual financial statements. For the purposes of declaring and paying corporate income tax, a taxpayer should complete and file the annual tax declaration in which its taxable income and deductible expenses are declared.

The corporate income tax rate is 10% of the taxable profit.

Taxpayers with an annual gross income of €50,000 or less that are not required to, or do not opt to, submit an annual tax declaration and financial statements pay corporate income tax on the gross income, as follows:

- 3% of each quarter's gross income resulting from the activities of trade, transport, agricultural and similar commercial activities, but not less than €37.50 per quarter;
- 5% of each quarter's gross income resulting from the provision of services, professional/vocational activities, entertainment and similar activities, but not less than €37.50 per quarter; and
- 10% of the net rental income for the quarter (gross rental income minus the 10% allowance).

The list of adjustments needed to calculate the taxable profit is quite short and includes:

- the cost of acquiring and improving land;
- expenditure on the acquisition, improvement, renewal and reconstruction of assets that are capitalised, depreciated or amortised;
- any fines, penalties and interest related to such assets; and
- any loss from the sale or exchange of property between related persons.

In general, reserve funds and provisions are not deductible, except for financial institutions. Bad debts are considered to be allowable if certain conditions are met.

The law provides for an exception for accrued expenses which are subject to a withholding tax if the expense is not fully paid by March 31 of the following year. Such expense will be considered to be tax deductible in the year when it is paid.

In addition, the law establishes limits for charitable contributions, which are deductible up to 5% of the taxable income, and representative expenses, which are deductible up to 50% of the amount invoiced, but for no more than 2% of the annual turnover.

The law gives an asset owner depreciation allowances. In case of a finance lease, depreciation may be claimed by the lessee as the person that bears the risk of the loss or destruction of the asset. The law also sets down methods and rates of depreciation of tangible assets and amortisation of intangible assets for fiscal purposes (ie, the straight-line method and the pooling system).

Exceptionally, new assets, machineries and methods of transport purchased between January 1, 2010 and December 31, 2012 are depreciated at an additional rate of 10%.

Losses may be carried forward for seven consecutive years and deductions from the taxable profit of each year are applied in the order in which they arose.

In case of a change of type of business organisation or a change of ownership of more than 50%, the carry-forward of losses will no longer apply.

Cross-border taxation

According to the Corporate Income Tax Law, the tax paid by Kosovo residents for business activities abroad should be considered as a tax credit to the extent of the tax which would have been due if the business had been carried out in Kosovo.

With regard to the creation of a permanent establishment, the definition of a “permanent establishment” is quite similar to that provided in the Organisation for Economic Cooperation and Development Model Tax Convention on Income and Capital.

Exceptionally, the law states that a permanent establishment would be constituted by the supply of any services, including any consultancy services, carried out in Kosovo by a non-resident person or entity through employees or others if such activities continued for a period or periods totalling 90 days or more within any 12-month period.

Foreign corporations that do not create a permanent establishment in Kosovo but render specific services to Kosovo entities exceeding the amount of €5,000 in one tax period are subject to withholding tax at a rate of 5% of the gross amount.

In addition, foreign and domestic corporations are subject to withholding tax for payments made in their favour and consisting of interests, royalties, rent, lotteries and games of chance.

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