



ICLG

The International Comparative Legal Guide to:

Corporate Tax 2015

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A practical cross-border insight into corporate tax work

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EDITORIAL

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

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of corporate tax.

It is divided into two main sections:

One general chapter. This chapter is entitled “The Road to (VAT) Recovery”.

Country question and answer chapters. These provide a broad overview of common issues in corporate tax laws and regulations in 41 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.co.uk.

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Kosovo



Alketa Uruçi



Andi Pacani

Boga & Associates

1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in Kosovo?

As an independent country, Kosovo has concluded three new tax treaties. They were entered into with the Republic of Albania (2006), the Republic of Macedonia and the Republic of Turkey (not yet in effect). Kosovo has also succeeded other tax treaties on avoidance of double taxation with respect to taxes on income and capital from the former Yugoslavia (with the United Kingdom, 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 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 corporate residence?

The test of corporate residence means:

- (i) being established in Kosovo; or
- (ii) having the place of effective management in Kosovo.

2 Transaction Taxes

2.1 Are there any documentary taxes in Kosovo?

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 July 2010. The standard rate of VAT is 16%; exports are zero rated. The turnover threshold for registration purposes is set to EUR 50,000.

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 tax-payers 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 passenger vehicles expenses which are not used solely for business purposes.

2.5 Are there any other transaction taxes?

There is 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.

2.6 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 a 10% withholding tax 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 a 10% withholding tax 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 “thin capitalisation” 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 not any 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 payment made to non-residents.

3.9 Does Kosovo have transfer pricing rules?

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, the resale price method or the cost-plus method. Additional rules are provided for by an administrative instruction.

4 Tax on Business Operations: General

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

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

4.2 When is that tax generally payable?

The tax is payable on quarterly advance payments and final settlement is made on or before 31 March of the following year upon the submission of financial statements.

4.3 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 Corporate Income Law.

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

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

- fines and penalties;
- income tax paid or accrued for the current or previous tax period and any interest or late penalty incurred for late payment of it;
- 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 5% of taxable income (before the deduction of such expenses);
- representation costs (these include publicity, advertising, entertainment and representation), which exceed 2% 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.

4.5 Are there any tax grouping rules? Do these allow for relief in Country for losses of overseas subsidiaries?

No, there are no tax grouping rules.

4.6 Do tax losses survive a change of ownership?

As a general rule, the losses may be carried forward for 7 (seven) years, but they do not survive a change of more than 50% in ownership or a change in the legal form of the entity.

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

No, there is no difference in this regard.

4.8 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 that own, use or occupy immovable property are subject to tax on real estate. The Municipal Assembly of each municipality sets the property tax rates on annual basis at the tax 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 Law indicates the rules applicable to capital gain. 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 If so, is the rate of tax imposed upon capital gains different from the rate imposed upon business profits?

Capital gains are taxed at the same rate as business profit.

5.3 Is there a participation exemption for capital gains?

No, there is no participation exemption for capital gains.

5.4 Is there any special relief for reinvestment?

No, there is no relief for reinvestment.

5.5 Does Kosovo 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 formation of a subsidiary.

6.2 Are there any other significant taxes or fees that would be incurred by a locally formed subsidiary but not by a branch of a non-resident company?

No, there are no such taxes or fees.

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 such a branch be subject to a branch profits tax (or other tax limited to branches of non-resident companies)?

There is no branch profit tax.

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

Branches have the same treatment under the local legislation.

6.6 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 profit by the branch.

7 Overseas Profits

7.1 Does Kosovo 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 Kosovo have "controlled foreign company" rules and, if so, when do these apply?

No, there are no "controlled foreign company" rules.

8 Taxation of Real Estate

8.1 Are non-residents taxed on the disposal of real estate in Kosovo?

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

8.2 Does Kosovo impose tax on the transfer of an indirect interest in real estate located in Kosovo and, if so, what constitutes an indirect interest?

No, there is no tax on the transfer of an indirect interest in real estate located in Kosovo.

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

No, Kosovo does not have any special regime for REITs.

9 Anti-avoidance

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

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?

No, there are no requirements to disclose avoidance schemes.



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Andi 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 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 Senior Partner/Managing Partner of KPMG Albania.

The firm's particularity is linked to the multidisciplinary services it provides to its clients. Apart from the widely consolidated legal practice, the firm also offers significant expertise in tax and accounting services, with a keen sensitivity to the rapid changes in the Albanian and Kosovo business environment.

With its diverse capabilities and experience, the firm services leading clients in most major industries, banks and financial institutions, as well as 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 also has an outstanding litigation practice, representing clients at all levels of the Albanian courts. This same know-how and experience has been drawn upon by the Legislature in the drafting of new laws and regulations.

The firm is continuously ranked by Chambers and Partners as a "top tier firm" for Corporate/Commercial, Dispute Resolution, Projects, Intellectual Property and Real Estate, as well as by IFLR for Financial and Corporate Law. The firm is praised by clients and peers as a "law firm with high-calibre expertise", being distinguished "among the elite in Albania" and described as "accessible, responsive and wise".

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