

The International Comparative Legal Guide to: Corporate Tax 2011

A practical cross-border
insight to corporate tax work

Published by Global Legal Group with
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Alketa Uruçi



Boga & Associates

Jonida Skendaj



1 General: Treaties

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

There are 29 income tax treaties currently in force in Albania. New treaties are under negotiation or are signed and in the process of ratification.

1.2 Do they generally follow the OECD or another model?

Income tax treaties currently in force in Albania generally follow the OECD model.

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

Under the Albanian Constitution, tax treaties must be ratified by the Parliament. A treaty ratified by the Parliament becomes part of Albanian legal system after publication in the Official Gazette of the Republic of Albania and prevails over any law which differs from the treaty's provisions.

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

Albanian income tax treaties do not contain "limitation of benefits" clauses.

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

No, the tax treaties prevail over the domestic laws.

2 Transaction Taxes

2.1 Are there any documentary taxes in Albania?

There are no documentary taxes.

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

Value Added Tax (VAT) is applicable to all taxable supplies of goods and services. The rate is 20%, except for exports of goods and certain exports of services, which are zero-rated.

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

Albanian legislation provides for some supplies which are exempted from VAT, such as:

- sale and lease of immovable properties (exceeding 2 months);
- financial services;
- supply of gold from Bank of Albania and second-tier banks;
- postage stamps;
- supplies of not for profit organisations engaged in religious or philosophical purposes, or not for profit organisations which have the status of "public benefit" and apply prices lower than the market prices;
- educational services (starting from 1 October 2010);
- supply of services and goods by/between certified contractors and their subcontractors engaged in the research and development of hydrocarbon operations;
- medicaments and packaging of medicaments;
- printing of newspapers, sale of newspapers, magazines, books and supply of advertisement services from written and electronic media;
- gambling, casino and hippodromes;
- identity cards;
- international services rendered outside the Albanian territory by a taxable person; or
- importation of goods by NATO and its own bodies in the framework of operations and pursuant to international agreements.

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

VAT is fully recoverable:

- VAT paid in relation to: (i) all taxable supplies carried out for the taxpayer during the fiscal period by other taxpayers; or (ii) all importations of goods carried out by the taxpayer during the fiscal period, where such supplies or importations have been carried out for the purpose of taxable supplies carried out or to be carried out by the taxpayer; and

- any tax credit allowed in case of bad debts, in compliance with the legal provisions.

In any case, no tax recoverability is allowed, in no circumstances, for expenses that are not entirely and solely for the purpose of the business activity.

Further, no tax recoverability is allowed for the following cases:

- 1) fuel expenses, unless certain conditions are met;
- 2) accommodation, travel and *per diem* expenses;
- 3) vehicles expenses, unless certain conditions are met;
- 4) fuel expenses used for passenger vehicles;
- 5) marketing and promotional materials; and
- 6) all services related to the aforesaid expenses.

The Albanian taxpayer is entitled to benefit the VAT reimbursement (VAT paid in excess) if the taxpayer has carried forward a VAT credit for three consecutive months, and the VAT credit requested for reimbursement exceeds the threshold of ALL 400,000.

2.5 Are there any other transaction taxes?

Excise tax is applied to a limited number of goods such as tobacco, alcoholic drinks, soft and fresh drinks, derivatives of petroleum and coffee. For goods produced in Albania, the excise tax is calculated on the sale price of goods. For imported goods this tax is calculated on the customs value including import duty. Excise tax is not applied when goods are exported.

Tax is levied either as a percentage rate or per unit stamp duty, depending on the goods.

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

A tax is levied upon the transfer of Albanian-situs immovable property by companies whether Albanian or foreign.

Taxable transfers include the sale and donation. In the case of a sale, the taxable base is the gross proceeds realised; in the case of a donation, it is the value of the property as assessed by the immovable property registration office. No deductions are allowed. The seller and the donor are the persons liable for the tax.

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 shares of a resident company/partnership paid to non-resident companies are subject to a final withholding tax on the gross amount at the rate of 10%, unless a 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-resident companies are subject to a final withholding tax on the gross amount at the rate of 10%, unless a 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-resident companies is subject to a final

withholding tax on the gross amount at the rate of 10%, unless a 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 rules limit the deduction for interest paid on a loan to the amount of interest paid on the loan not exceeding four times the company's net assets (i.e. debt/equity ratio of 4:1). The rules apply to all loans taken, except for short-term loans (less than one year).

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

No there is not.

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

Please refer to the above question 3.4. The debt subject to the thin capitalisation rule comprises the total of the debts regardless of the source of such debt.

3.7 Are there any restrictions on tax relief for interest payments by a local company to a non-resident in addition to any thin capitalisation rules mentioned in questions 3.4-3.6 above?

Interest paid in excess of the annual average second tier banks' interest rate is considered as non-tax deductible.

3.8 Does Albania have transfer pricing rules?

Transfer pricing adjustments may be made if conditions set in a transaction between associated persons differ from those that would be made between independent persons. Two persons are deemed to be associated if the activities of one person are controlled by the other or if one person acts in accordance with the instructions, requests or decisions of the other. In particular, the following are regarded as associated persons: (a) spouses; (b) a legal entity and any person who owns, directly or indirectly, at least 50% of the shares or voting rights in that entity; and (c) two or more legal entities if a third person owns, directly or indirectly, at least 50% of the shares or voting rights in each entity.

The instructions of the Ministry of Finance provide that transfer pricing adjustments may be made only by a commission of the General Tax Department; thus, the tax authorities must submit all transfer pricing cases to that commission. The instructions also state that, in applying the transfer pricing rules, the commission should refer to the 1995 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

4 Tax on Business Operations: General

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

The general corporate profit tax is levied at a rate of 10%.

4.2 When is that tax generally payable?

The profit tax return is due by 31 March of the year following the tax year. The tax is computed under the self-assessment system.

Advance payments of tax are due monthly. The payments for each month from January to April are equal to one twelfth of the profit tax due according to the latest assessment (e.g. tax year 2008 for 2010). The payments for the remaining months are equal to one eighth of the profit tax paid in the preceding tax year (e.g. tax year 2009 for 2010), less payments made in January to April.

In certain situations, the tax authorities may adjust the amount of the advance payments if, according to their estimation, the profit tax for the current year would exceed the tax paid in the preceding year by more than 10%.

Advance payments of tax are creditable against the final tax liability. Any excess may be deducted from tax arrears or, on request, from future tax liability, or may be refunded.

4.3 What is the tax base for that tax (profits pursuant to commercial accounts subject to adjustments; other tax base)?

The determination of the taxable base starts with the profit shown in the profit and loss account. The profit calculation should be made according to the accounting legislation in force and the relevant instructions issued by the Ministry of Finance.

In calculating the taxable base the following expenses are considered:

- expenses incurred for generating the operational profit;
- insurance premiums;
- depreciation allowances;
- interest (excluding certain situations as established by law); and
- bad debts when the following conditions are simultaneously met:
 - (a) the corresponding amount has been included earlier as income;
 - (b) the bad debt is cancelled in the accounting books of the taxpayer; and
 - (c) all possible legal action to collect payment has been undertaken.

4.4 If it otherwise differs from the profit shown in commercial accounts, what are the main other differences?

The following are examples of items that are not deductible:

- the cost of acquisition and improvement of land (capitalised);
- the cost of benefits in kind (tax-free for the recipient);
- interest in excess of the annual average bank interest rate;
- interest paid for loans exceeding on average four times the amount of net assets value during the taxable period (such rule is not applicable for banks, insurance companies and financial lease companies);
- private pension premiums;
- damage and waste related to production, transportation and storage in excess of the rates determined by law;
- dividends;
- the profit tax itself;
- penalties and fines;
- expenses in respect of technical, consulting and management services provided by non-resident entities, and not paid in the

relevant tax period (such expense become deductible should the company pay the amount of withholding tax related to such services during that tax period);

- personal consumption expenses;
- representation and reception expenses when they exceed 0.3% of the annual turnover;
- sponsorship expenses when they exceed 3% of profit before tax and sponsorship expenses for press publishers when they exceed 5% of the profit before tax;
- expenses for salaries and other compensations deriving from employment relationship, in case the payment is not performed through banking system; and
- expenses resulting from transactions performed in cash for amounts exceeding ALL 300,000 for each purchase.

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

There are no tax-grouping rules in Albania.

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

No it is not.

4.7 What other national taxes (excluding those dealt with in "Transaction Taxes", above) are there - e.g. property taxes, etc.?

Property tax is levied annually on all residents and non-residents who own agricultural land or buildings in Albania. Agricultural land is classified into ten groups and taxed at rates varying from ALL 700 to 5,600 per hectare. Buildings are classified according to their use and taxed at rates ranging from ALL 5 to 200 per m². A 50% tax credit is available for tax due on buildings located in rural areas. The local municipality may modify the tax rates set by the law. In addition, it decides on the payment schedule of the tax and on reductions for immediate payment of tax.

4.8 Are there any local taxes not dealt with in answers to other questions?

Hotel Residency Tax

The hotel residency tax is payable by all persons residing in a hotel, both Albanian and foreigners and amounts to 5% of the hotel bill. It is calculated and withheld by the hotel administration. The hotel administration must remit the total amount of hotel residency taxes to the respective municipality by the 5th of the month for the previous month.

Tax on New Constructions

This tax is levied on the value of a new investment at a rate from 2% to 4% in Tirana and from 1% to 3% in other municipalities. The local municipality determines the actual rate. Exceptionally, for infrastructure projects such as construction of national roads, ports, airports, tunnels, dams, construction of infrastructure in energy, the infrastructure tax is 0.1% of the investment value (which includes the value of equipment and machineries for such project), but not less than the cost of rehabilitation of the damaged infrastructure.

5 Capital Gains

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

Capital gains from the sale of a company's fixed business assets are taxed as part of the company's ordinary business income.

Losses may be carried forward for 3 years. If during the tax year more than 25% of direct or indirect ownership of the share capital or voting rights of the company is transferred, losses may not be carried forward. No carry-back is allowed.

Because capital gains are taxed as part of the company's ordinary business income, the rules on ordinary losses apply also to capital losses.

5.2 If so, is the rate of tax imposed upon capital gains different from the rate imposed upon business profits?

The rate of the tax imposed upon capital gains is no different from the rate imposed upon business profits.

5.3 Is there a participation exemption?

There are no participation exemptions.

5.4 Is there any special relief for reinvestment?

There is no special relief for reinvestment provided under the Albanian tax legislation.

6 Branch or Subsidiary?

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

There are no taxes imposed upon the formation of a subsidiary in Albania.

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?

There are not any significant taxes or fees that would be incurred by a locally formed subsidiary but not by a branch of a non-resident company.

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

The taxable profits of a local branch are determined in the same way as the taxable profits of a local company in Albania.

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

An Albanian branch of a foreign entity is subject to corporate income tax at the same rates applicable to resident companies.

6.5 Would a branch benefit from tax treaty provisions, or some of them?

In principle, the establishment of an Albanian branch by a foreign enterprise creates a permanent establishment of that enterprise in Albania and therefore it enjoys the benefits of tax treaty provisions (if applicable).

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

No withholding tax is imposed as the result of a remittance of profits by the branch in Albania.

7 Anti-avoidance

7.1 How does Albania address the issue of preventing tax avoidance? For example, is there a general anti-avoidance rule or a disclosure rule imposing a requirement to disclose avoidance schemes in advance of the company's tax return being submitted?

There is no general anti-avoidance provision in the Albanian tax legislation.

**Alketa Uruçi**

Boga & Associates
Deshmoret e 4 Shkurtit Str.
P.O. Box 8264, Tirana
Albania

Tel: +355 4 22 510 50
Fax: +355 4 22 510 55
Email: auruci@bogalaw.com
URL: www.bogalaw.com

Since 1999 Mrs. Uruçi focused her practice on tax and customs laws in all industries and sectors in Albania. With her double major studies background in Law and Economics, Alketa has acquired solid understanding and experience in tax legislation and its impact and interaction with other legal framework such as labor and employment, commercial companies law, real estate and construction.

Her practice areas encompass corporate tax, VAT, national taxes, local taxes, personal income tax, excise tax and customs duties. Alketa advises and manages tax assignments in all industries and sectors such as aviation, banking and financial institutions, cement, consumer goods, construction and real estate, telecommunications, etc.

Alketa is active as tax litigator in all levels of Albanian courts, where she represents the clients during judiciary claims against the tax assessments and tax authorities.

**Jonida Skendaj**

Boga & Associates
Deshmoret e 4 Shkurtit Str.
P.O. Box 8264, Tirana
Albania

Tel: +355 4 22 510 50
Fax: +355 4 22 510 55
Email: jskendaj@bogalaw.com
URL: www.bogalaw.com

Ms. Jonida Skendaj has acquired a vast experience in tax legislation, commercial law and she has gathered excellent knowledge in competition and antitrust legislation. She assisted a number of legal and tax due diligence assignments as well as tax assistance concerning major tax issues of international companies investing in industrial sector, such as energy, telecommunication, construction etc.

Ms. Jonida Skendaj graduated from University of Paris X - Nanterre, Faculty of Law in Business Law in 2002 and has obtained a master degree from the same University in Business Law, in 2003.

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Global Legal Group
59 Tanner Street
London SE1 3PL
United Kingdom
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk