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Global Legal Group

The International Comparative Legal Guide to: Corporate Tax 2012

A practical cross-border
insight to corporate tax work

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Albania

Aigest Milo



Ardjana Shehi



KALO & ASSOCIATES

1 General: Treaties

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

Albania has entered into income tax treaties (Double Taxation Treaties) with 36 countries, including most of the Member States of the European Union. However, currently there are no tax treaties in force with the United Kingdom and the United States of America.

1.2 Do they generally follow the OECD or another model?

The DTT's entered into by Albania follow the OECD Model Convention.

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

The Albanian Constitution provides that international treaties (including DTT-s) ought to be ratified by the Parliament. A ratified treaty is published in the Official Gazette and prevails in the case of conflict with the domestic legislation.

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

Generally, DTT's entered into by Albania do not contain anti-treaty shopping provisions.

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

Pursuant to the Albanian Constitution which provides for the hierarchy of sources of law, DTT-s (as international treaties ratified by Law) prevail the domestic legislation.

2 Transaction Taxes

2.1 Are there any documentary taxes in Albania?

Albanian legislation does not provide for any documentary tax except for national tax, named as stamp tax.

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

Albanian legislation provides for VAT, which is applicable to taxable supplies of goods and services. The Albanian law on VAT provides the following rates:

- A standard rate of 20%.
- A reduced rate of 10% for the supply of drugs and medical services.
- A zero rate for the export of goods and export of services; such services provided outside the country.

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

According to Albanian tax legislation, as a general rule, the legal entities which perform an economic activity and have an annual turnover of over ALL 5,000,000, are subject to VAT. However, the main transactions exempted from VAT are as follows:

- The sale and lease of immovable property (for more than 2 months).
- Financial services.
- Supply of gold from Bank of Albania and second-tier banks.
- Supply of post stamps or similar stamps.
- Supply from religious or philosophical not-for-profit organisations, or not-for-profit organisations which have the "public benefit" status and that apply prices lower than the market prices.
- Educational Services.
- Supply of services and goods by and between certified contractors and their subcontractors engaged in the research and development of hydrocarbon operations.
- Printing of newspapers, sale of newspaper, magazines, books and supply of advertisement services for written and electronic media.
- Supply of identity cards.
- Supply of gambling, casino and hippodrome services.
- Supply of international services by a taxable person outside Albanian territory.
- Import of goods by NATO and its own bodies in the framework of operations and pursuant to international agreements.
- Import of goods and services performed by contractors and subcontractors relating to the research and development of hydrocarbon operations.

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

VAT is fully recoverable by all VAT taxpayers; Albanian legislation also provides for VAT reimbursement. Albanian tax legislation provides that VAT related to expenses that are not related to the taxpayer's business activity is not recoverable. Further, VAT is not recoverable for some expenses, such as: fuel expenses used for passenger vehicles, marketing and promotions materials, etc.

2.5 Are there any other transaction taxes?

Apart from VAT, Albanian Tax legislation does not provide for a transaction tax of general application, except for a special transfer tax in some transactions of a specific nature, such as: tax on the transfer of immovable properties.

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

In addition to VAT, another tax is excise tax, which is applied to the sale and/or import of a limited number of goods, such as tobacco, alcoholic drinks, petrol derivatives, etc. The tax is calculated either as a percentage rate or an amount per sold unit.

3 Cross-border Payments

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

Albanian legislation provides that all Albanian tax residents have the obligation to withhold, declare and transfer the withholding tax (at the rate of 10%) to Tax Authorities in consideration to payments made to non-Albanian tax residents, unless there is an effective corresponding DTT which provides that dividend is not taxed in Albania.

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

Royalties paid to a non-resident taxpayer are subject to Albanian withholding tax (at the rate of 10% on the gross amount), unless a corresponding effective Double Taxation Treaty provides otherwise.

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

Interest paid to a non-resident taxpayer is subject to the Albanian withholding tax (at the rate of 10%) on the gross amount, unless a corresponding effective Double Taxation Treaty provides otherwise.

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

Albanian Tax Legislation allows the tax deductibility of interest paid in consideration of a loan if such interest does not exceed four times the company's net assets. This rule is not applied for short-term loans (i.e. less than one year).

WHT relief for interest is not restricted by reference to "thin capitalisation" rules.

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

Albanian Legislation does not expressly provide for any such rule.

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

The thin capitalisation rules apply to all debts, regardless of their source.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

The above-mentioned rules also apply to interest payments made by an Albanian taxpayer to non-residents taxpayers. No other related rules/restrictions are provided.

3.8 Does Albania have transfer pricing rules?

Albanian legislation has some provisions related to transfer pricing, but the existing related legal provisions do not provide for transfer pricing to the required standards. However, be informed that a secondary legislation provides that the Transfer Pricing Commission of the General Taxation Directorate, in applying the transfer pricing rules, 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 rate of the corporate profit tax in Albania is 10% (ten percent).

4.2 When is that tax generally payable?

The corporate profit tax is payable by advance instalments every three months. The payments for each month from January to April are equal to 1/12 of the profit tax due according to the latest tax return (e.g. tax year 2009 for 2011). The payments for the remaining months are equal to 1/8 of the profit tax paid in the previous fiscal year, by subtracting the payments made from January to April. The taxpayer ought to submit to the tax authorities the annual balance sheet by 31 March of the year following the fiscal year and the corporate tax of the previous year is adjusted with the results as stated in that balance sheet.

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

The tax base for Albanian corporate tax is the company's net taxable income. The net taxable income is calculated as the difference between the annual turnover and the tax deductible expenses related to the economic activity of the company.

The taxable income of the company is calculated according to the accounting legislation/rules in force.

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

Tax deductible expenses are important for the calculation of taxable corporate income.

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

Albanian tax legislation does not provide for tax grouping rules.

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

There is no difference to corporate profit tax based on whether the profit is distributed or retained.

4.7 Are companies subject to any other national taxes (excluding those dealt with in "Transaction Taxes") - e.g. tax on the occupation of property?

A property tax is applied on an annual basis to all residents (including companies registered in Albania) and non-residents who own agricultural land or buildings in Albania.

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

All entities (commercial companies, NGO, etc.) registered in the Republic of Albania are also subject to the following local taxes and fees: Sign Board Tax; Green Tax; and Cleaning Fee.

5 Capital Gains

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

Albanian legislation provides for the taxation of capital gain related to the transfer of shares/quotas and the transfer of immovable property(ies).

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 rate of 10% and such rate is the same for corporate profit tax.

5.3 Is there a participation exemption?

The taxation of capital gain generated from the transfer of quotas/shares is not exempted due to any participation rule, except for the participation exemption of capital gain for purposes of corporate tax.

5.4 Is there any special relief for reinvestment?

Albanian legislation does not provide any special relief for reinvestment.

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 imposed upon the formation of 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?

The taxation regime is similar for a locally-formed subsidiary and 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 using the same rules as if it was a locally-formed subsidiary.

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

The branch of a non-resident company in Albania is subject to the corporate profit tax at the same rates applicable to locally formed companies.

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

The establishment of a branch of a non-resident company constitutes a permanent establishment in Albania, hence the tax treaty provisions apply to the branch too.

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

According to strict interpretation of the provisions of the Albanian Legislation, the transfer of profit from the Albanian branch to its non-resident parent company is not taxable with any WHT.

7 Overseas Profits

7.1 Does Albania tax profits earned in overseas branches?

Albanian tax legislation provides that Albanian tax residents are subject to the corporate profit tax for all their profits, generated in Albania and abroad. However, in the case of any applicable Double Taxation Treaty(ies), the provisions of such treaty(ies) will be applied.

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

The dividend received by a local company from a non-resident company is calculated for the purpose of taxable income of this local company.

7.3 Does Albania have “controlled foreign company” rules and if so when do these apply?

There are no expressive “controlled foreign company” provisions in Albanian tax legislation.

8 Anti-avoidance

8.1 Does Albania have a general anti-avoidance rule?

Albanian legislation does not provide for general anti-avoidance rules.



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

There are no requirements to make special disclosure of avoidance schemes in Albania.



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