



ICLG

The International Comparative Legal Guide to:

Corporate Tax 2018

14th Edition

A practical cross-border insight into corporate tax work

Published by Global Legal Group, with contributions from:

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Published by

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London SE1 3PL, UK
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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Ashford Colour Press Ltd
November 2017

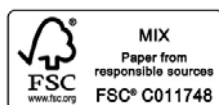
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ISBN 978-1-911367-83-3

ISSN 1743-3371

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Albania

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Andi Pacani



1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in your jurisdiction?

Albania has concluded tax treaties with 41 countries, of which 40 are currently in force.

1.2 Do they generally follow the OECD Model Convention or another model?

Albanian tax treaties follow the OECD model.

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

The Albanian Constitution requires treaties to be ratified by Parliament.

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.

1.6 What is the test in domestic law for determining the residence of a company?

Entities that are established in Albania or have their place of effective management in Albania are considered resident.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

No, there are no documentary taxes in Albania.

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

VAT was first introduced in 1995. In 2015, the legislation was harmonised with the EU Directive on VAT. The standard rate of VAT is 20%, which applies to all persons (companies and entrepreneurs) having an annual turnover exceeding ALL 5 million (approx. EUR 35,000). Exceptionally, persons carrying out certain specific categories of activity (such as economists, auditors, doctors and dentists and similar professions except for lawyers) are VAT taxpayers irrespective of their annual turnover (i.e. there is no VAT threshold). Only accommodation in tourism facilities is subject to a reduced rate of 6%.

Exports of goods, goods in passenger baggage, the international transport of goods and passengers and related services, and services to international intra-governmental organisations, are subject to VAT at 0% (benefiting from VAT exemption but with a right of deduction).

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

VAT regulations provide for supplies exempt from VAT without a right of deduction. The most important are as follows:

- Lease and sale of land.
- Sale of buildings, unless the seller opts for VAT applicability.
- Long lease of buildings (when the lease duration exceeds two months), unless the lessor opts for VAT applicability.
- Financial services.
- Certain services rendered by not-for-profit organisations.
- Educational services rendered by private and public educational institutions.
- Postal services.
- Materials used for the production and packaging of medicines.
- Supply of newspapers, magazines and books of any kind.
- Supply of advertising in electronic and written media but only when the advertising services are provided directly from the media (and not through intermediaries).
- Supply of services performed outside Albania by a taxable person whose place of activity or residence is in Albania.
- Supply of services relating to gambling activities, casinos and hippodromes.

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. VAT cannot be reclaimed on recreation and accommodation expenses, passenger vehicles, fuel under certain limits, or any expenses related to the above-mentioned expenses.

2.5 Does your jurisdiction permit “establishment only” VAT grouping, such as that applied by Sweden in the *Skandia* case?

There is no VAT grouping available in Albania, and “establishment only” is not permitted.

2.6 Are there any other transaction taxes payable by companies?

There is a fee on the transfer of an ownership right on real estate, payable by legal entities in case of sale or donation of real estate.

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

Except for VAT and excise, carbon and circulation tax is levied on the production and importation of certain combustible goods (including fuel) in Albania.

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 distribution paid to non-residents are subject to a final withholding tax at a rate of 15%, unless a double 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-residents are subject to a final withholding tax at a rate of 15%, unless a double 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-residents is subject to a final withholding tax at a rate of 15%, unless a double tax treaty provides for a lower rate.

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

The only thin capitalisation rule limits the tax deduction for interest paid on a loan (for corporate income tax purposes) to the portion of interest paid on the loan not exceeding four times the company’s net assets (i.e. a debt-to-equity ratio of 4:1). The rule applies to all loans taken, except for short-term loans (payable within less than one year). It does not apply to banks, finance leases or insurance companies. Additionally, effective from 1 January 2018, in case of

loans and funding from related parties, the “net interest expense” will be considered deductible up to 30% of EBITDA (Earnings Before Interest, Tax, Depreciation and Amortisation). The taxpayer has the right to carry forward the non-deducted part of the interest and claim its tax deductibility in the subsequent periods, except when the taxpayer’s ownership has changed by more than 50%.

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

There is no such provision in Albanian legislation.

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

The debt-to-equity ratio is calculated without taking into consideration the source of the financing or relevant guarantees. In regard to net interest expense as percentage of EBITDA, there are no explicit rules stipulating the inclusion of third-party loans in the calculation.

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

Interest in excess of the annual average bank interest rate is non-deductible for tax purposes.

3.8 Is there any withholding tax on property rental payments made to non-residents?

Property rental payments made to non-residents are subject to final withholding tax at a rate of 15%.

3.9 Does your jurisdiction have transfer pricing rules?

The recently changed legislation on transfer pricing is based on the Transfer Pricing Guidelines 2010 of the Organisation for Economic Cooperation and Development (OECD). However, in case of conflicts between the OECD Guidelines and provisions of the Albanian legislation on this matter, the local legislation provisions will prevail.

The new legislation lays down the transfer pricing methods to be used by taxpayers when performing a controlled transaction, depending on the specifics of the transaction. The methods described are:

- the comparable uncontrolled price method;
- the resale price method;
- the “cost plus” method;
- the transactional net margin method; and
- the profit split method.

The method chosen by the taxpayer depends on, and should take into account, different circumstances. However, the legislation provides the option for the taxpayer to choose another transfer pricing method, if the taxpayer proves that none of the methods listed in the legislation can be used in a reasonable way to apply the market principles in the controlled transactions.

Taxpayers performing controlled transactions, as defined above, which exceed the amount of ALL 50,000,000 (approximately EUR 360,000), should present to the tax authorities (i.e. the General or Regional Tax Directorate where the taxpayer has been registered) an Annual Controlled Transactions Declaration, as per the format provided in the respective Instruction on Transfer Pricing.

In addition, in the case that the tax authorities of a country with which Albania has signed a double tax treaty make a transfer pricing adjustment that results in the taxation of the profit for which the taxpayer has already been taxed in Albania, the Albanian taxpayer may submit a written request to the General Tax Directorate on the respective adjustment to be made to the profit tax in Albania. The requested transfer pricing adjustments may be refused or granted fully/partially within three months of the date of the submission of the request by the taxpayer.

4 Tax on Business Operations: General

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

Corporate profits are taxed at a rate of 15%.

4.2 Is the tax base accounting profit subject to adjustments, or something else?

Yes, the taxable profit that results from the financial statements prepared under and pursuant to accounting standards, is adjusted as provided for and required by the tax regulation.

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

The main adjustments consist of the following: depreciation allowances; restrictions related to thin capitalisation of loan interests and other expenses (e.g. thresholds of tax deductions for representation and sponsorship expenses); bad-debt requirements; penalties; provisions (except for banks and insurance companies); impairment and revaluation of assets, etc.

4.4 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

No, there are no tax grouping rules.

4.5 Do tax losses survive a change of ownership?

If, during a taxable period, direct and/or indirect ownership of stock capital or voting rights of a person changes by more than 50% in value or number, the losses incurred in the previous years cannot be used against the profit of the year; neither can they be carried forward.

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

No, there is no difference in this regard.

4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

Property tax is levied annually on all residents and non-residents who own agricultural land, buildings and “terrain” in Albania. Agricultural land is classified into 10 groups and is taxed at rates varying from ALL 700 to 5,600 per hectare. Buildings are classified

according to their use and are taxed at rates ranging from ALL 5 to 200 per m². Buildings in villages which are tourist destinations are taxed at ALL 400 per m². “Terrain” (defined in law as land available for building upon) is taxed at ALL 0.14 to 20 per m². A 50% tax credit is available for the tax due on buildings located in rural areas. The local municipality may modify the tax rates set by law. In addition, it decides on the payment schedule of the tax and on reductions for immediate payment of tax.

In addition, there are a variety of national and local taxes. These include the tax on new constructions, hotel tax, royalty tax, advertising tax, etc.

5 Capital Gains

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

There are no specific capital gains taxes for corporate income tax subjects. As a general rule, capital gains are included in the business profit of the entity and are taxed at the same rate of 15%.

5.2 Is there a participation exemption for capital gains?

Tax legislation does not provide for a participation exemption for capital gains.

5.3 Is there any special relief for reinvestment?

There is no rollover relief available in Albania, or any other relief.

5.4 Does your jurisdiction 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 the sale of interest in assets/shares, but the seller must declare and pay the tax on income generated from the transaction.

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 the formation of subsidiaries.

6.2 Is there a difference between the taxation of a local subsidiary and a local branch of a non-resident company (for example, a branch profits tax)?

There are no such differences in taxes or fees specifically designed for subsidiaries. The taxable income of branches is subject to profit tax at the same rate (15%) as any Albanian entity.

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

Branches are taxed only on taxable income from an Albanian source. Taxable income is determined in the same manner as for resident companies.

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

Branches are considered permanent establishments; hence they may benefit from double tax relief.

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

Transfers or repatriation of profits by the branch are not subject to any tax in Albania.

7 Overseas Profits

7.1 Does your jurisdiction tax profits earned in overseas branches?

Foreign-sourced income is taxable in Albania. However, tax credit is allowable for the amount of income tax paid overseas for the income derived abroad up to the amount that would have been payable in Albania on Albanian-sourced income.

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

Receipt of dividends is tax-exempt income in Albania.

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

No, there are no “controlled foreign company” rules.

8 Taxation of Commercial Real Estate

8.1 Are non-residents taxed on the disposal of commercial real estate in your jurisdiction?

Non-residents are taxed on the disposal of real estate in Albania, at a rate of 15% of the realised profit.

8.2 Does your jurisdiction impose tax on the transfer of an indirect interest in commercial real estate in your jurisdiction?

Current legislation does not provide for indirect interest taxation.

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

Under current legislation, there is no special tax regime for REITs or their equivalent in Albania.

9 Anti-avoidance and Compliance

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

Albanian fiscal legislation does not provide for a general anti-avoidance rule. However, it gives the tax authorities the right to use alternative methods of tax assessment when verifying the lack of economic substance in a transaction.

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

Under current legislation, there are no requirements to disclose any avoidance scheme.

9.3 Does your jurisdiction have rules which target not only taxpayers engaging in tax avoidance but also anyone who promotes, enables or facilitates the tax avoidance?

Albanian legislation does not have specific rules to target parties other than the taxpayer committing the tax avoidance.

9.4 Does your jurisdiction encourage “co-operative compliance” and, if so, does this provide procedural benefits only or result in a reduction of tax?

The Tax Procedure Law requires co-operative compliance before the tax audit commences. Taxpayers are entitled to review the tax returns before a tax audit takes place; this results in lower penalties.

10 BEPS and Tax Competition

10.1 Has your jurisdiction introduced any legislation in response to the OECD’s project targeting Base Erosion and Profit Shifting (BEPS)?

The Albanian Government has indicated that the additional thin capitalisation rule, i.e. net interest expense to EBIDTA, will be introduced in response to OECD’s project (BEPS).

10.2 Does your jurisdiction intend to adopt any legislation to tackle BEPS which goes beyond what is recommended in the OECD’s BEPS reports?

Except from the above-mentioned rule, there are no publicly expressed intentions to adopt any other legislation against BEPS, either within or beyond the OECD’s recommendations.

10.3 Does your jurisdiction support public Country-by-Country Reporting (CBCR)?

There is no support for Country-by-Country Reporting in Albania.

10.4 Does your jurisdiction maintain any preferential tax regimes such as a patent box?

There are no preferential regimes in Albania.

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