

Dear reader,

We are pleased to present you with the new issue of “In Focus” which is focusing on recent developments to legal framework on Tax, Money Laundering and Health and Security at Work in Albania as well as to the Competition Law and Immovable Property Tax in Kosovo.

The editorial “Article” shows an overview of how the Albanian labour code is enhanced by new Health and Safety law.

RECENT DEVELOPMENTS

Albania

- *Fiscal and customs debts to be remitted*
- *Money Laundering rules amended*
- *Implementation of the Law on Safety and Health at Work*
- *Proposed amendments to Income Tax Law*

Kosovo

- *New law to govern the protection of competition on the market*
- *A new immovable property tax to be imposed in Kosovo*

ARTICLE

- *Albanian Labour Code enhanced by new Health and Safety Law*

Wish you enjoy your reading and will be glad to welcome any of your queries.

RECENT DEVELOPMENTS

Albania

- *Fiscal and customs debts to be remitted*

The Albanian Parliament approved Law no. 10418, dated 21.04.2011 “On Capital Legalization and Partial Remission of the Tax and Customs Debts”. The Law is published in the Official Gazette and has entered into force on 18 May 2011.

It provides for the capital legalization based on the voluntary declaration of individuals (Albanian citizens), entrepreneurs and legal entities, as well as for the remission of fiscal and customs debts subject to fulfillment of conditions determined thereto. The right to benefit the capital legalization and remission of debts can be exercised until 31 December 2011 (the “Implementation Period”).

Below are some features of the Law.

Capital legalization

All income that is not previously declared by individuals or entrepreneurs as well as the value of properties not recorded by legal entities may be “legalized” in pursuance with the rules mentioned below.

Individuals and legal entities must make a voluntary declaration on the intention to legalize the capital not declared at all or that has been declared with a lower value than the effective one.

The legalized capital will be deposited with a second tier bank. Any transfer of the legalized capital before expiry of the period of 3 years from the date of legalization is subject to penalties.

The banks with which the legalized capital is deposited and which will effectuate the transfer are liable to implement the said restriction. In addition, the banks have the duty to inform the concerned persons on the above restrictions (i.e., the penalties) before the transfer takes place.

The legal entities having registered in their financial statements immovable properties, machineries and equipments with a value lower than the market value, have the right to (within the Implementation Period) reassess such properties at their market value. Any differences resulting there from shall be recorded in the financial statements of the year 2011 and may be depreciated for tax purposes. To such end, legal entities shall pay:

- for immovable properties, 3% of the difference between the reassessment value and the registered accounting value;
- for the machineries/equipments, 5% of the difference between the reassessment value and the registered accounting value.

The Law provides for a series of guarantees benefiting to the individuals, entrepreneurs and legal entities in the process of capital legalization, such as fiscal effects neutralization, preservation of secrecy, future indiscrimination and freedom to conceal information on the source of capital.

Remission of tax and customs obligations

The following will benefit from the remission of the tax and customs obligations:

- taxpayers that do not result with a tax credit towards the tax administration;
- taxpayers having a tax credit towards the tax administration, which have accepted in writing that the tax credit amount shall be decreased with the corresponding value of the remitted tax obligation;
- persons having customs obligations towards customs administration.

Remittance of tax obligations shall imply no any payment by:

- entrepreneurs registered as small business taxpayers, for the outstanding tax obligations related to the fiscal period up to 31 December 2010;
- individuals, for the outstanding tax obligations related to the fiscal period up to 31 December 2010;
- VAT taxpayers, for the outstanding tax obligations which are recorded in the registers of the fiscal administration up to 31 December 2008;
- vehicles' owners, for the outstanding obligation of the annual vehicle registration tax and annual road circulation tax for the period up to 31 December 2010 (remission is granted also for those vehicles that are out of circulation).

A payment of 30% of the principal amount is to be executed within the Implementation Period for tax obligations evidenced in the registers of the fiscal administration from 1 January 2009 to 31 December 2009. The payment for tax obligations evidenced in the registers of the fiscal administration from 1 January 2010 to 31 December 2010 is 50% of the principal amount.

Also, those taxpayers that have not performed correct declarations of payable taxes (amount lower than the effective amount) for the fiscal periods until 31 December 2010, may benefit from the said remittance, provided that they declare the effective tax amount payable (before a tax audit of the fiscal administration takes place) and pay 50% of the self declared amount. The remitted part shall consist of the difference/remaining part of the tax obligation along with the penalties and interests that would have been applied in this case.

If a tax audit concludes that the obligation is higher than the obligation declared from the taxpayer, under this Law, the taxpayer loses the right of remittance.

The remittance from customs obligations shall be granted for the following:

- obligations, penalties and interests raised until 31 December 2008 and evidenced upon decisions of customs authorities, that are accounted and outstanding until 31 December 2010, against no any payment;
- outstanding penalties and interests related to the principal obligations raised during year 2009 and evidenced upon decisions of the customs authorities, that are accounted and outstanding until entry in force of the Law, against payment of 50% of the principal amount;
- outstanding penalties and interests related to the principal obligations raised during year 2010 and evidenced upon decisions of the customs authorities, that are accounted and outstanding until entry in force of the Law, against payment of total principal amount.

Other categories of remitted obligations

The Law provides for the remission of penalties and interests related with social and health security contributions which (i.e., contributions) were not paid until 31 December 2010. This remission is applicable to entrepreneurs and legal entities.

Are remitted also the outstanding obligations of taxpayers related to actions with non fiscal income (such as non payment for cash registers, tax certificates, fiscal invoices, excise stamps or transport tickets).

- *Money Laundering rules amended*

Law no. 10391, dated 03.03.2011 introduces some amendments to Law no. 9917, dated 19.05.2008 “On Money Laundering”.

Below are the main features of the current changes.

The “beneficiary owner” of a legal entity is considered the person holding the ultimate effective control towards such legal entity. The “ultimate effective control” is the relationship in which a person *inter alia*:

- i) directly or indirectly owns at least 25% of the shares or voting rights of a legal entity;
- ii) directly owns at least 25% of the voting rights of a legal entity, pursuant to a shareholders agreement

Another amendment concerns the due diligence that the entities subject to the Money Laundering Law must observe. These entities must identify and verify the identity of their clients when, among others, the clients seek to perform a direct transfer of money within or outside the Albanian territory in an amount equal to or higher than 100,000 Leke (or the counter value in foreign currency).

The above said entities must pay special attention to those complex transactions having high and unusual values, which visibly are not characterized by an economical or lawful purpose. They must analyze the scope and purpose of such transactions and reflect them in writing (the documents are to be preserved for a period of five years and made available to the responsible authority and auditors).

Other specific requirements/criteria to be observed by the said entities, are introduced by the amendments. These requirements apply mostly in the ambit of the implementation of the in-depth due diligence of the client and proper identification of the transaction, internal organization of the client, obligation to terminate the business relationship and obligation to report the suspicious activity to the responsible authority (when the subject is not able to perform the in-depth due diligence), etc.

- *Implementation of the Law on Safety and Health at Work*

To the legal framework on Safety and Health at Work (i.e., Law no. 10237, dated 18.02.2010) are now added two decisions of the Council of Ministers.

These decisions (i.e., Decisions no. 107 and 108, dated 09.02.2011) are published in the Official Gazette no. 18 and entered into force as of 07.03.2011.

All employers are required to comply with the provisions of said decisions within six months from their entry into force (i.e. by 07.09.2011).

As highlighted in our Newsletter issue no. 02/10 (www.bogalaw.com), Law no. 10237 introduces the obligation for the employers to establish a Council of Safety and Health at Work (the “Council”; some brief information is given in the editorial “Article”). The mission of the Council is to contribute to the protection of health and security of employees as well as to improve the work conditions. The number of persons representing the employees in such Council depends on the number of employees working with the employer and on the level of risk of the specific work.

Pursuant to the Decision no. 107, dated 09.02.2011, the number of employees and employers’ representatives in the Council shall consist of the following:

- not less than 3 representatives of the employees and 3 representatives of the employer, if the number of employees varies from 51 up to 250;
- not less than 4 representatives of employees and 4 representatives of the employer if the number of employees varies from 251 up to 500;
- not less than 6 representatives of employees and 6 representatives of the employer if the number of employees varies from 501 up to 1500;
- not less than 9 representatives of employees and 9 representatives of the employer if the number of employees exceeds 1500.

In case of less than 50 employees, entities elect a representative of the employees in a council established at professional level and the employer elects its representative in such Council.

In entities where the work process represents high risk related to health and security, the Council must be created near the employer independently from the number of employees.

In addition, Decision no. 107, dated 09.02.2011 provides detailed requirements regarding the election procedures for the employees’ representatives, convocation, holding and decision making process of the meetings of the Council.

The Decision no. 108, dated 09.02.2011 provides for the rules on organization of the safety and health protection services.

The employer must organize the internal health and safety protection. There are four groups of employers:

Group A, B and C: employers with 20 or more employees

Group D: employers with less than 20 employees.

While employers falling under group **A, B and C** may choose whether to assign one or more employees to cover issues of protection, safety, occupational health and prevention of occupational risks or outsource these services to specialized persons, employers listed under group **D** must outsource the service of health and safety protection to specialized persons.

- *Proposed amendments to Income Tax Law*

The Minister of Finance is preparing a new draft law aiming to amend provisions to the current Income Tax Law (Law no. 8438, dated 28.12.1998). This document is not yet presented to the Council of Ministers, hence it may be subject to further amendments.

The proposed draft law provides that will be considered as tax non deductible the expenses for compensation and bonuses paid to the employees, including the administrators, by entities that are engaged in the financial sector.

Exception is made for “the thirteenth salary given pursuant to provisions of the Albanian Labor Code”.

Another proposed amendment to the Income Tax Law concerns the tax rate of the tax on profit, which is currently determined at the flat rate of 10%.

The new proposed provision states that the tax on profit tax rate is determined pursuant to the percentage of the taxpayer’s profitability, as per the following rates:

- (i) 10% if the profitability percentage is up to 20%;
- (ii) 20% if the profitability percentage is 20% to 30%;
- (iii) 30% if the profitability percentage is more than 30%.

For purposes of this provision, the profitability percentage is the ratio between the taxable profit and the total income.

Kosovo

- *New law to govern the protection of competition on the market*

Kosovo Parliament has recently passed the Law on Protection of Competition (hereinafter “the law” or “Competition law”) which was published on 25.11.2010 in the Official Gazette no. 88. The law abrogates the previous law on competition (i.e. Law no. 2004/36) and entered into force on 10.12.2010.

The aim of the legislator is to harmonize the legal framework with the EU competition policy and regulations. The law regulates concentration of enterprises, restrictive agreements, abuse of a dominant position and restrictive practices.

Concentration: Competition law provides with the definition of the concentration of enterprises, notification thresholds and terms and the evaluation criteria of a concentration.

Definition of concentration: Competition law prohibits concentrations of enterprises, which may significantly damage competition, in particular when such concentration results in strengthening of current dominant position or creation of a new dominant position.

Subject to the Competition law, the concentration of the enterprises is created by installing permanent control which is acquired through:

1. Merger of two or more independent enterprises or parts of these enterprises;
2. Acquisition of direct or indirect control, or influence on the dominating position of one or more enterprises or parts of enterprises, by:
 - taking over majority of shares or of a part of them,
 - taking over majority voting rights and
 - in another way in the sense of provisions of laws in force and other regulations.

Competition law provides that the acquisition of control is achieved by transferring the rights, contracts or other acts through which one or more enterprises, either individually or together, taking into consideration all legal and factual circumstances, acquire the possibility to achieve influence of the dominant position for one or more enterprises in permanent basis.

Also creation of a joint venture from one or more independent enterprises, which works on permanent basis as an independent economic subject, shall be considered as concentration.

Notification threshold: In order to obtain the decision for permitting concentration, all participants in concentration should submit with the Kosovo Competition Authority the objective of concentration if in a cumulative manner the following conditions have been fulfilled:

1. determined incomes of all participating enterprises together, in international market, exceed one hundred (100) million Euro, based on financial reports of the financial year preceding the concentration year, and if at least one of the participants is located in the Republic of Kosovo;
2. general incomes of at least two (2) participants in concentration in Kosovo domestic market, exceeds three (3) million Euro based on financial reports preceding the year of concentration.

Penalties: The Kosovo Competition Authority may impose disciplinary measure in an amount up to ten percent (10%) of the total incomes of the enterprise realized during the last year for which the final report has been completed if the company participates in the execution of prohibited concentrations of enterprises.

Restricted Agreements: Competition law prohibits all agreements between two or more independent enterprises, decisions made by business associations and concerted practices that aim or may significantly influence on disturbance of market competition in relevant market, and in particular the ones that:

- (i) directly or indirectly impose purchase or sale price or any other condition in trade;
- (ii) limit or control production, market, technological development and investments;
- (iii) share markets or supply sources;
- (iv) implement unequal conditions for similar transactions with other enterprises, consequently placing them in an unfavorable competitive position;

(v) apply conditions for agreements on contracts to rely on other contracting subjects, through other supplementing conditions that do not have any natural or common trade practice in connection to the object of such contract.

Dominant position: According to Competition law an enterprise has a dominant position if, as a supplier or purchaser of several certain types of goods or services:

1. is not subject to fair competition on the market;
2. it has important power in the market compared to its existing or potential competitors.

As a threshold for a company to be considered to have a dominant position is the presence on the market which should be more than forty percent (40%).

The presence of forty percent (40%) shall not be considered a dominant position in case the respective enterprise arguments that it is exposed to a competition or does not have a superior position in the market compared to its competitors.

Two (2) or more independent enterprises may have a dominant position if, in comparison to their competitors, they operate together on the market.

Abuse of a dominant position: According to the Competition law any abuse by one or more enterprises of the dominant position in corresponding market is prohibited.

The abuse of dominant position occurs if:

1. direct or indirect setting of unreal purchase or sale prices and other unfair trade conditions, respectively;
2. limitation of production, markets or technological development to the prejudice of consumers;
3. implementation of different conditions for similar duties with other enterprises thereby placing them in a disadvantageous competitive position;
4. agreeing on contracts under condition that other contracting parties accept additional obligations;
5. setting prices or other conditions, the objective or the result of which is to prevent entering or exclude certain competitors or one of their products from the relevant market;

6. refusal of entrance of another enterprise, by giving an appropriate compensation, in the network or infrastructures of the enterprise with dominant position, if this refusal for usage of the network or infrastructures prevents the other enterprise to act as a competitor of the enterprise with dominant position.

Implementation: Implementation of the Competition Law should be in conformity with European Union Directives on competition.

- *A new immovable property tax to be imposed in Kosovo*

Kosovo Parliament has passed the Law no. 03/L – 204, dated 07.10.2010 “On Immovable Property Tax which abrogates UNMIK Regulation no.2003/29 “On Immovable Property Tax in Kosovo”, as amended. Law no. 03/L – 204 is published in the Official Gazette no. 88, dated 25.12.2010 and has entered into force on 10.12.2010.

Law no. 03/L – 204 does not provide significant changes from the previous legislation. Its purpose is to establish the standards and procedures that municipalities must follow in administering the property tax.

As per Law no. 03/L – 204, the immovable property tax (IPT) will be imposed on all immovable properties in Kosovo. Persons liable for IPT are the property owners or the legal persons who use the property (in case the property owner cannot be determined or located).

On the other hand, Law no. 03/L – 204 exempts from payment of such tax certain organizations such as Institutions of Government of the Republic of Kosovo, United Nations, specialized Agencies of United Nations and of the European Union, Kosovo Multinational Force (KFOR, ICO and EULEX), legations and consulates accredited by Kosovo State, foreign liaison offices, governmental agencies, intergovernmental organizations or foreign donor agencies that provide humanitarian aid, reconstruction services, civil administration or technical assistance within Kosovo, non-governmental organizations, religious institutions and structures which are endorsed by the law for protection of cultural and historical monuments.

According to Law no. 03/L – 204 all persons owning, using or occupying immovable property will be liable to register the property with the municipality property tax database and supply the relevant municipality with information concerning the immovable property subject to registration, on or before 1 March of each tax period.

The tax base for the IPT will be the market value of the property determined in accordance with the standards set forth pursuant to this law. Each year the market value of any property is the value of the property on 31 December of the previous year. The municipalities should review and update the market value of each property every 3-5 years. They should re-assess the property each year if new construction or substantial improvements are carried out on the property, or if there are changes in the use of the property.

Each Municipality Assembly should set the IPT rates on an annual basis. These rates will vary from 0.05% to 1% of the market value of the property. Tax rates may change among different categories of the properties.

A special allowance of EUR 10,000 is granted to persons who, on or before 1 March of a tax period, establish that the property serves as their principal residence. Such allowance will be recognized as a deduction from the taxable value of the property.

Each fiscal year the municipalities should issue the property tax bill and submit it to the respective owner/taxpayer until 31 March. IPT is payable in two equal installments on or before 30 June and 31 December.

According to Law no. 03/L – 204 the taxpayer who fails to apply for the registration of the immovable property and to supply the municipality with the IPT information will be informed through a reminder notice. If the taxpayer fails to comply within 60 days from the delivery of this notice, the right to appeal the tax bill will be lost. In addition, any taxpayer who fails to pay the IPT within the legal deadline will be liable for a penalty equal to 10% of the tax obligation.

Under Law no. 03/L – 204 the taxpayer has the right to claim that the assessed value of the property was not the market value.

The taxpayer may request the review of the tax bill by the Municipality Board for Tax Complaints on Immovable Property.

ARTICLE

- ***Albanian labour code enhanced by new health and safety law***

Interview of Renata Leka and Besa Tauzi to Corp INTL magazine (www.corp-intl.com)

In February 2010 a new law (no. 10237 “On health and safety in working premises”) came into force. This Law intends to better integrate the actual legal environment in relation to security and safety conditions of employees in the working premises. The law stipulates that employers must abide by the mandatory security and safety standards in every working area. Employers must eliminate risk factors and provide training, information and consultation services for their employees.

The Albanian Labor Code (Law no. 7961 dated 12.07.1995 “The Labor Code in Republic of Albania” as amended) is mostly focused and oriented to provide extensive protection to employees in the framework of the employment relationship. It provides for, but is not limited to, the rights and obligations of employer and employees and key features that the employment contract should contain, for the formalities to be observed in the framework of the employment relationship and for the working conditions to be provided to the employee.

The section on working hours and overtime occupies a relevant part of the Albanian Labor Code, so as the section on employment relationship termination which provides for the types of employment relationship

The request for review should be submitted within 30 days from the receipt of the tax bill along with the supporting documents.

The Municipality Board should issue its decision within 60 days from the receipt of the request. If the decision is in favor of the taxpayer the municipality should refund the tax paid in excess and the interest accrued within 30 days from the day that the decision was taken. Any taxpayer who does not agree with the decision issued by the Municipality Board may appeal within 30 days from receipt of such decision.

recognized by the Albanian Labor Code and procedures to be observed in case of termination of the employment relationship. It is to be noted that not much space is given to the Collective Agreements though some articles provide for its requirements and other issues of termination.

The Albanian Labor code, as well as the employment legislation and practice in Albania are in continuous development. Despite this, the informality of employment relationships remains a constant pressing issue. There are cases where the employment relationship is not governed by an employment contract between parties, explained Renata Leka and Besa Tauzi, partner and assistant manager at Boga & Associates. “This causes avoidance of responsibilities for the employer and privation for the employee from the rights recognized by the Albanian Labor Code. Further, in the ambit of the recent introduction of the new provisions on health and safety in working premise, there are cases where technical conditions for health safety in the working premises, especially for those areas of business where considered as “risky” i.e. manufacturing, construction activities, etc. as provided under the Albanian Labor Code still need adequate improvements”.

BOGA & ASSOCIATES

However, the new law is expected to provide for a better environment in terms of safety in the working premises.

The employment law team at Boga & Associates advises on all areas of employment law.

“Our firm is mostly engaged in providing legal advice to local and international companies being in the position of employer and in dispute resolutions deriving from employment relationships.

When advising our clients or when we are asked to draft the employment contract governing the employment relationship we are strongly committed to ensure full compliance with the labor law by the employer and remind the later compliance with all rights, guarantees and technical conditions required by the Albanian Labor Code to be complied with,” commented Ms Leka and Ms Tauzi.

BOGA & ASSOCIATES

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Boga & Associates

Boga & Associates, established in 1994, has emerged as one of the premiere law firms operating in Albania. During the years, the firm earned a reputation for providing the highest quality of legal, tax and accounting services to its clients in Albania and Kosovo.

The practice maintains its commitment to quality through the skills and determination of a team of attorneys and advisors with a wide range of skills and experience. The extensive foreign language capabilities of the team help to ensure that its international clientele have easy access to the expanding Albanian and Kosovo business environment.

The firm provides services to a broad spectrum of regional and local organizations, including private and public companies, partnerships and government agencies as well as not for profit organizations. The firm services leading clients in most major industries, banks and financial institutions, companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, entertainment and media, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods.