

Dear reader,

In this issue we have reported recent developments to the Albanian legal framework concerning the establishment of Administrative Courts, the ratification of the Double Tax Treaty between Albania and the State of Qatar, as well as the amendments introduced to the data protection law.

Our editorial “Article” presents an overview of the new law governing accounting and financial reporting in Kosovo.

RECENT DEVELOPMENTS

Albania

- *Establishment of Administrative Courts*
- *Double Tax Treaty between Albania and the State of Qatar ratified by Albanian Parliament*
- *Amendment of the Data Protection Law*

ARTICLE

- *New law governing accounting and financial reporting requirements in Kosovo*

We hope you enjoy reading this issue, and will be glad to welcome any of your queries should they arise in relation to the topics herein contained.

RECENT DEVELOPMENTS

Albania

• *Establishment of Administrative Courts*

On 3 May, 2012 the Albanian Parliament approved Law no. 49/2012 “On the Organization and Functioning of Administrative Courts and the Judgment of Administrative Disputes” (effective as of 1st June, 2012).

Law no. 49/2012 inter alia abrogates articles 35/b, 320, 324-333 of Law no. 8116, dated 29.03.1996 “The Civil Procedure Code of the Republic of Albania”, as amended, which provided for judgment of administrative disputes by the administrative section of the ordinary civil courts.

Law no. 49/2012 regulates the following:

- (i) establishment, organization and functioning of the administrative courts;
- (ii) jurisdiction and competence of administrative courts;
- (iii) organization of the administrative judicial system;
- (iv) decisions of the administrative court and their enforcement.

Administrative courts are organized as (i) Administrative Courts of First Instance; (ii) Administrative Court of Appeal and (iii) Administrative College of Supreme Court.

The following fall under the jurisdiction of the administrative courts:

- (i) disputes arising out of normative/individual administrative acts and public administration contracts;

- (ii) disputes arising due to unlawful intervention or omission of public administration bodies;
- (iii) conflicts of competencies arising between public administration bodies;
- (iv) disputes arising out of employment relations, if the employer is a public administration body;
- (v) other requests related to administrative infringements.

The new provisions of Law no. 49/2012 provide for access to the court of individuals and entities claiming to have been damaged by the public administration actions or omissions. Law no. 49/2012 guarantees a fast and effective judicial examination of the claims in a relatively short period, i.e. not exceeding two months in the first instance courts, and one month in the appeal court. Contrary to the previous provisions, under Law no. 49/2012, the public administration bodies have the burden of proof concerning the legitimacy of contested administrative actions or omissions.

- ***Double Tax Treaty between Albania and the State of Qatar ratified by Albanian Parliament***

The Double Tax Treaty entered into between Albania and Qatar is ratified by the Albanian Parliament upon law no. 42/2012, dated 19.04.2012. It shall enter into force on the date of receipt of the latest notification, through diplomatic channels, indicating the completion of internal legal procedures necessary in each country. However its provisions shall have effect only on or after the 1st of January of the calendar year following the entry into force.

The Double Tax Treaty provides for the taxation of dividends and interests of no more than 5 percent and in certain cases gives the exclusive right of taxation to the country of residence.

As for the royalties, the withholding tax is no more than 6 percent of the gross amount.

Regarding the permanent establishment, the Treaty contains same provisions as OECD Double Tax Treaty model, with the particularity that a construction site and the provision of services in one of the contracting states shall constitute a permanent establishment if these activities continue for more than six months within a twelve month period.

- ***Data Protection Law amended***

On 26.04.2012 the Albanian Parliament passed Law no. 48/2012 “On Some Additions and Amendments to Law no. 9887, dated 10.03.2008 “On the Protection of Personal Data”.

The Albanian legislator intervened heavily into the law by making substantial changes.

In the first place the legislator provided that the “consent” of the subject data should be expressed in a written declaration. In this way the legislator leaves no more room for interpretation with regard to the form of “consent” for data processing, this in comparison to the vague definition of the original version of the law which provided only for a “specific declaration” from the subject data, freely agreeing to the processing of his/her data.

Additionally, the law empowers the Commissioner, by allowing the same to determine the countries

having an adequate level of protection of personal data for international transfer. Previously such competence belonged to the Council of Ministers. The legislator addressed with the changes to the law, also controllers. In this context controllers are required to notify the Commissioner on the data processed. In the ambit of the changes to the law, the legislator requires the controller to promptly respond to the Commissioner within the deadline set by the same in case the notification in the opinion of the Commissioner needs to be completed. The notification will be considered as not filed, if the controller fails to respond properly.

Other significant amendment to Law 9887/2008 concerns the pecuniary fines for administrative contraventions, which have become more severe.

ARTICLE

New law governing accounting and financial reporting requirements in Kosovo

Contributed by Ms. Mirjeta Emini as first published in ILO

Since September 10, 2011 accounting, financial reporting requirements, audit requirements, qualifications for professional accountants, licensing of individual auditors and audit firms have been governed by the new Law on Accounting, Financial Reporting and Audits (04/L-014). The new law has also established the Financial Reporting Council – a body that is similar to the Board on Standards for Financial Reporting.

Preparing financial statements

Under the new law, International Financial Reporting Standards, as issued by the International Accounting and Assurance Standards Board (IAASB) and approved by the Financial Reporting Council, are mandatory for large, medium and small-sized entities when preparing general purpose financial statements. These standards do not apply to micro-enterprises, although other accounting and reporting rules (as issued by the Council) will apply.

Consolidated financial statements should be prepared in accordance with EU Directive 78/660/EEC. The new law defines the time limit for the retention of accounting documents:

- Payrolls should be preserved permanently;
- Financial statements and supporting documents must be retained for up to 10 years; and
- Supporting accounting evidence should be stored for a minimum of six years.

Accounting records are to be maintained in the official languages of Kosovo and using the Euro in terms of currency. Large and medium-sized companies may keep accounting records

in English, provided that financial statements are also translated into Kosovo's official languages.

The new law requires companies to verify at least once a year the existence and evaluation of assets, liabilities and capital through conducting an inventory of these items supported by proper evidence. Company management is responsible for ensuring that financial statements are fair and truthful.

A company's general financial statements must be filed with the Council (a copy must be submitted to the Ministry of Trade and Industry) by no later than April 30th of the following year. Consolidated financial statements should be filed with the Council (a copy must be submitted to the Ministry) by no later than June 30th of the following year. Failure to adhere to these deadlines will be subject to a penalty varying from €5,000 to €25,000.

Auditing financial statements

Statutory audits should be conducted in accordance with the International Standards of Auditing and related guidelines of the IAASB. Financial statements of large companies must be audited by auditing firms, while those of medium-sized companies may be audited either by auditing firms or individual auditors. Small businesses need not have their statutory financial statements audited. Failure to submit audited financial statements and maintain accounting books within the deadlines prescribed by the new law will be subject to a penalty varying from €5,000 to €10,000. Penalties will also be imposed if a company fails to comply with the required accounting and auditing standards.

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