



ICLG

The International Comparative Legal Guide to:

Private Client 2014

3rd Edition

A practical cross-border insight into private client work

Published by Global Legal Group, in association with CDR, with contributions from:

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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

Information Press Ltd
December 2013

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ISBN 978-1-908070-83-8

ISSN 2048-6863

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EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Private Client*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work.

It is divided into two main sections:

Eight general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 29 jurisdictions.

All chapters are written by leading private client lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Owen Clutton and Jonathan Conder of Macfarlanes LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Pre-entry Tax Planning

1.1 In Albania, what pre-entry estate and gift tax planning can be undertaken?

Individuals are subject to tax on gifts at the rate of 10% calculated on the market price of the gift.

All Albanian and/or foreign individuals that own real estate property are subject to the annual tax on real estate. Such tax consists of the tax on building and the tax on agricultural land and is paid by the owner of the real estate.

Tax on building is paid per square metre of the building, including the underground floors, and is proportional to the period of ownership. Such tax varies depending on the district where the building is located.

Tax on agricultural land is paid per hectare of agricultural land. It varies depending on the land's category and the district where the land is located.

Proceeds from the transfer of real estate from individuals are subject to income tax at a rate of 10%. The taxable base is the difference between the sale price and the purchase price of the real estate.

1.2 In Albania, what pre-entry income tax planning can be undertaken?

Foreign investors should firstly consider the existence of a Double Tax Treaty entered into between Albania and the investor's country of residence. Under these treaties the income generated from immovable property located in Albania is usually only taxed in Albania.

Albania is an attractive country for foreign investors because of the application of the flat rate of 10% for all taxes (corporate tax, personal income tax, withholding tax).

1.3 In Albania, can pre-entry planning be undertaken for any other taxes?

No pre-entry planning is available.

2 Connection Factors

2.1 To what extent is domicile relevant in determining liability to taxation in Albania?

Under Albanian legislation, domicile is relevant for determining the

tax residency of individuals and therefore their liability to taxation in Albania.

2.2 If domicile is relevant, how is it defined for taxation purposes?

Under Albanian law, an individual shall be deemed to be domiciled in Albania (and therefore to be a tax resident in Albania) if he has a permanent home available to him or his family, or if he has personal and economic relations in Albania (a centre of vital interests), irrespective of their nationality.

2.3 To what extent is residence relevant in determining liability to taxation in Albania?

Under Albanian law, the duration of stay of individuals in Albania is relevant for determining their tax residency status and therefore their liability to taxation in Albania.

While residents pay tax on their worldwide income, non-residents pay tax only on income generated within the territory of Albania.

An exception can be made if there is a Double Tax Treaty in force which contains a different determination of residence for the purpose of liability to taxation in Albania.

2.4 If residence is relevant, how is it defined for taxation purposes?

Individuals staying in Albania for a period of more than 183 days per year are considered Albanian tax residents.

2.5 To what extent is nationality relevant in determining liability to taxation in Albania?

Nationality is not a determining factor under Albanian law. It is considered in cases when a double tax treaty applies and the individual should assess its residence for tax purposes.

2.6 If nationality is relevant, how is it defined for taxation purposes?

Please see the answer to the question 2.5 above.

3 General Taxation Regime

3.1 What gift or estate taxes apply that are relevant to persons becoming established in Albania?

The real estate tax is payable by individuals (irrespective of their nationality and whether they are tax residents in Albania or not).

The income tax on the transfer of real estate is applicable for the transfer of ownership title on buildings and other real estate properties from individuals.

3.2 How and to what extent are persons who become established in Albania liable to income tax?

Resident individuals are taxable on their worldwide income. Income tax is levied at a flat rate of 10%. The tax is levied on the gross income from employment, entrepreneurial activity, sale of immovable property, rent, interest, dividends, investments in securities, royalties and intellectual property, gambling and games of chance, gifts, etc.

All resident and non-resident persons whose gross annual income reaches or exceeds ALL 2 million must complete and submit an annual income tax declaration. The said declaration must be filed with the Regional Tax Directorate of the jurisdiction where the individual resides, before 30 April of the year following the tax period (for which the declaration is made).

3.3 What other direct taxes (if any) apply to persons who become established in Albania?

There are certain municipality taxes which are not material.

3.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in Albania?

There is no sale tax in Albania.

With regard to VAT, all individuals and legal entities making taxable supplies and having an annual turnover in excess of ALL 5 million are subject to VAT. In such cases, the registration for VAT purposes is required. For individuals and legal entities that operate in the import/export sector it is mandatory to be registered, notwithstanding the annual turnover. Lawyers, notaries, doctors, architects, auditors, accountants, etc., and taxpayers conducting hotel business activities, are VAT taxpayers irrespective of their annual turnover.

The rate of VAT is 20%. Exports of goods and services and supplies relating to international transport and telecommunications are zero-rated.

Exceptionally, medicines and medical services are subject to a reduced rate of VAT at 10%.

Customs duties are charged according to imported goods' classification in a 6-digit harmonised system. For many imported items, minimum/reference custom values are applied. Customs tariffs applicable on agricultural and industrial products originating from EU Members are currently eliminated.

Major exemptions from customs duties are applicable for:

- goods imported under government agreements, and where the duty exemption is explicitly stated in the agreement;
- humanitarian aid;
- donated goods imported for charitable, philanthropic, or

assistance purposes by not-for-profit organisations, religious institutions, public entities; and

- goods imported for trade promotion purposes and advertising.

Excise tax is applied to a limited number of goods such as tobacco, alcoholic drinks, soft and fresh drinks, derivatives of petroleum and coffee.

Tax is levied either as a percentage rate or per unit stamp duty, depending on the commodity. The following rates are applicable:

- Cigars and cigarillos: ALL 2,500 per kg.
- Cigarettes: ALL 3,500 per 1,000 cigarettes.
- Beer: ALL 1,000 up to ALL 3,600 per hectolitre.
- Wine: ALL 3,000 up to ALL 12,000 per hectolitre.
- Heavy oils (gas oil): ALL 37 per litre.
- Coffee roasted: ALL 60 per kg.
- Pneumatic tyres: ALL 20 to 100 per kg.

3.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in Albania?

No, there are no anti-avoidance taxation provisions.

3.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

No, there are no specific anti-avoidance provisions.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to direct taxes on the remittance of assets or funds into Albania?

There are no restrictions on remittance of assets or funds from abroad into Albania.

4.2 What taxes are there on the importation of assets into Albania, including excise taxes?

Assets imported into Albania may be subject to customs duties, excise taxes and VAT. Customs duties are levied on the price of assets plus any additional costs related to their import (transport, insurance).

VAT at the rate of 20% applies on the import of goods. The VAT is, in general, levied on the value of imported goods plus customs duties plus excise tax, if any.

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

No, there are not any particular issues.

5 Succession Planning

5.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in Albania?

Applicable law on succession

Law no. 10428, dated 02.06.2011 "On Private International Law"

provides for the following rules:

- Succession related to movable property is regulated under the laws of the country in which the ancestor had his usual residence until the time of death.
- Succession related to real estate is regulated under the laws of the country in which the real estate is located.
- The ancestor can choose the applicable law for the entire inheritance. Choice of law is effective as long as the ancestor, at the moment of such choice, or at the time of his/her death, was a citizen or a resident of that country. The choice of law cannot deny successors their right of legal reserve of inheritance.

The disposition of a will is regulated under the laws of the country in which the testator was registered as a citizen at the time of making, changing or revoking the will.

Validity of the will

The will is valid if it complies with the validity requirements set forth in one the following laws:

- the law of the country in which the testator made the will;
- the law of the country of which the testator was a citizen at the time of making the will or at the time of death;
- the law of the country where the testator was a resident at the time of making the will or at the time of death; or
- the law of the country where the real estate provided in the will is located.

Under the Albanian Civil Code every person over the age of 18 can make a will, as well as women under this age provided she is married. A person cannot make a will if, by a court's verdict, that person does not have the ability to act, or at that time was not able to understand the importance of his/her actions.

5.2 Are there particular rules that apply to real estate held in Albania or elsewhere?

Under article 36 of the Private International Law, real rights on property are regulated as follows:

- Ownership, possession and other real rights on properties are regulated by the laws of the country where the property is located.
- Entitlement or loss of ownership, possession and other real rights are regulated by the law of the country in which the property is located at the time of the verification of the circumstances that determine the entitlement or loss of such rights.
- The determination of whether a property is movable or immovable is made pursuant to the laws of the country in which the property is located.

Under the Albanian Civil Code, ownership over real estate can be acquired through:

- contract;
- will; and
- prescription.

6 Trusts and Foundations

6.1 Are trusts recognised in Albania?

Trusts are not recognised in Albania.

6.2 If trusts are recognised in Albania, how are they taxed in Albania?

This is not applicable.

6.3 If trusts are recognised, how are trusts affected by succession and forced heirship rules in Albania?

This is not applicable.

6.4 Are foundations recognised in Albania?

Not for profit organisations without membership (such as foundations) are governed by Albanian law no. 8788, dated 07.05.2001 "On Not for Profit Organisations" and the Civil Code. Not for profit organisations are associations, foundations and centres, the activity of which is conducted in an independent way and which is not affected by the state. Such organisations conduct not for profit activities, which include economic or non-lucrative activities, provided that profit/income or assets are used only for the realisation of the scope of the organisation as set forth in its charter.

6.5 If foundations are recognised, how are they taxed in Albania?

Based on the Not for Profit Organisations Law and the Income Tax Law, not for profit organisations are exempt from taxation on quotas and donations. However, if the foundation conducts economic activity, no tax exemption is granted.

6.6 If foundations are recognised, how are foundations affected by succession and forced heirship rules in Albania?

There are no tax rules on succession or forced heirship under Albanian tax legislation.

7 Immigration Issues

7.1 What restrictions or qualifications does Albania impose for entry into the country?

According to the law no. 108/2013 "On Foreigners" ("the Foreigners Law") and Decision of the Council of Ministers no. 513, dated 13.06.2013 "On Definition of Criteria, Procedures and the Documentation for Entry, Residence and Treatment of Foreigners in the Republic of Albania" (the "Decision on Foreigners"), foreigners who intend to enter, reside or transit to/from the Republic of Albania, shall meet the following criteria:

- a) to be in possession of a travel document recognised by the Republic of Albania, valid for at least 3 months after the date of entry;
- b) to be in possession (when applicable) of a valid entry visa, or in possession of a valid residency permit issued by the competent Albanian authority or issued by other countries and recognised by the Republic of Albania;
- c) is not considered a threat to public order, safety, national security and will not endanger the international relations of the Republic of Albania and other countries;
- d) there are no records in the national electronic register of foreigners limiting his/her entrance;

- e) is not a risk to public health in the Republic of Albania;
- f) is not a debtor subject to administrative measures under the provisions of the Foreigners Law;
- g) has not been declared *persona non grata* by the Ministry of Interior; and
- h) according to the evaluation of border authorities, additional documents can be requested, such as an invitation, return ticket, evidence of accommodation, work permit (in case of entrance for employment purposes), and evidence of financial means of EUR 30 per day for an adult and EUR 15 for a minor.

7.2 Does Albania have any investor and other special categories for entry?

The Law on Foreigners does not provide for any investor categories for entry.

With regard to special categories, apart from foreign citizens which can enter Albania without a visa pursuant to the Decision on Foreigners, the following categories shall be exempted from the obligation to obtain an Albanian visa for residence of up to 90 days within 180 days:

- (a) foreigners that are holders of a valid multiple entry-exit Schengen visa, on the condition that it has been used first in one of the Schengen countries, or foreigners that are holders of a valid residence permit of one of the Schengen countries;
- (b) foreigners that are holders of a valid multiple entry-exit visa with or valid residence permit issued by the United States of America or Great Britain and Northern Ireland, provided that visas have been previously used in these countries; and
- (c) foreign citizens which are permitted to enter Schengen countries without a visa.

7.3 What are the requirements in Albania in order to qualify for nationality?

In accordance with law no. 8389, dated 05.08.1998 "On the Albanian Nationality", a foreigner may obtain Albanian citizenship by naturalisation if he/she satisfies the following conditions:

1. he/she is 18 years of age or over;
2. he/she has resided legally in the territory of the Republic of Albania for not less than five consecutive years;
3. he/she has a place of residence in Albania and sufficient income;
4. he/she has not been sentenced in his/her country of origin, in the Republic of Albania or any third country for an offence for which the law provides a sentence of not less than three years in prison. Exceptions to this rule are made only in those cases where it is established that the sentence is given for political reasons;
5. he/she has at least basic knowledge of the Albanian language; and
6. granting Albanian citizenship to such foreigner does not affect the security and defence of the Republic of Albania.

Foreigners who comply with the condition under point 1) above may be granted Albanian citizenship by naturalisation even if the conditions under 2) through to 5) have not been met if the Republic of Albania has a scientific, economic, cultural and national interest in granting that person citizenship.

If the person is stateless, the conditions under points 1), 3), 4) and 5) above are not required to be met.

A foreigner who is married to an Albanian citizen for a period of not less than three years may obtain Albanian citizenship by

naturalisation even if he/she does not meet the conditions under points 2) and 5) above. In this case, the foreigner must have legally resided in the Republic of Albania for at least one year.

7.4 Are there any taxation implications in obtaining nationality in Albania?

The test for a foreign individual to be taxable in Albania is the residency test, and the source of income test.

It is not mandatory that a foreigner obtains Albanian nationality to be taxable in Albania for his or her income. It is sufficient that he or she stays in Albania for more than 183 days in a year, where in such case the foreigner will be liable to taxation in Albania for his or her worldwide income.

An exception is made when the foreigner is a national of a country with which a Double Tax Treaty is effective and which provides for different rules.

8 Taxation of Corporate Vehicles

8.1 What is the test for a corporation to be taxable in Albania?

Under the Income Tax Law, the following shall be subject to profit tax: (i) legal entities and partnerships that are registered for VAT purposes; (ii) legal entities, partnerships or other joint ventures incorporated or organised under a foreign law but that conduct their activity in the Albanian territory; and (iii) any other person, irrespective of the status or legal form of registration or organisation, if this person is subject to VAT and the annual turnover is more than ALL 8 million (approximately EUR 65,000).

8.2 How are branches of foreign corporations taxed in Albania?

Branches of foreign corporations are subject to profit tax (10% of taxable income minus tax deductible expenses) as they fall under point (ii) listed in the answer to question 8.1. They are subject to all profit tax calculation rules as if they were a locally established corporation, save for the transfer of their net profit to the parent company. Such transfer is tax free, unlike the transfer from a local subsidiary of a foreign company, the net profit of which is transferred/distributed to the sole shareholder and qualifies as a dividend. Such profit is subject to the withholding tax of 10% (except when a Double Tax Treaty is effective and provides for a lower tax rate).

9 Tax Treaties

9.1 Has Albania entered into income tax and capital gains tax treaties and, if so, what is their impact?

Albania has entered into bilateral conventions on avoidance of double taxation of income and capital with 38 countries, out of which 35 are effective (Poland, Romania, Malaysia, Hungary, Turkey, Czech Republic, Russia, Macedonia, Croatia, Italy, Bulgaria, Sweden, Norway, Greece, Malta, Switzerland, Moldavia, Belgium, China, France, Egypt, the Netherlands, Kosovo, Serbia, Montenegro, Austria, Slovenia, Latvia, South Korea, Bosnia and Herzegovina, Ireland, Germany, Spain, Singapore).

Tax treatment of income paid by an Albanian person or a person

residing in Albania and perceived to be a resident of a country with which a Double Tax Treaty is effective, shall be governed by the said treaty and for determination of the taxation right, the national income tax legislation shall not be applicable.

9.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

Tax treaties are based on the OECD model.

9.3 Has Albania entered into estate and gift tax treaties and, if so, what is their impact?

Albania has not entered into estate and gift tax treaties.

9.4 Do the estate or gift tax treaties generally follow the OECD or another model?

This is not applicable.



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Jonida is fluent in French, English and Italian.

BOGA & ASSOCIATES

LEGAL • TAX • ACCOUNTING

Boga & Associates, established in 1994, has emerged as one of the premier law firms in Albania, earning a reputation for providing the highest quality of legal, tax and accounting services to its clients. The firm also operates in Kosovo (Pristina) offering a full range of services. Until May 2007, the firm was a member firm of KPMG International and the Senior Partner/Managing Partner, Mr. Genc Boga, was also Senior Partner/Managing Partner of KPMG Albania.

Our firm's particularity is linked to the multidisciplinary services it provides to its clients. Apart from the widely consolidated legal practice, the firm also offers significant expertise in tax and accounting services, with a keen sensitivity to the rapid changes in the Albanian and Kosovar business environment.

With its diverse capabilities and experience, 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, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods. The firm also has an outstanding litigation practice, representing clients in all levels of Albanian courts. This same know-how and experience has been drawn upon by the Legislature in the drafting of new laws and regulations.

The firm is continuously ranked by Chambers and Partners as a "top tier firm" for Corporate/Commercial, Dispute Resolution, Projects, Intellectual Property and Real Estate, as well as by IFLR in Financial and Corporate Law. The firm is praised by clients and peers as a "law firm with high-calibre expertise" and is distinguished "among the elite in Albania" and as "accessible, responsive and wise".

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