

To keep you up-to-date with the latest economic and financial developments, this Tax Alert prepared by our Tax Team provides information that may affect the operation of your business in Albania.

### NEW MINIMUM NATIONAL WAGE

Upon decision dated 26 December 2018, the Council of Ministers decided to increase the minimum national wage to Leke 26,000 (from Leke 24,000), effective as of 1 January 2019.

As a result of this decision, the amount of social contributions payable by both employee and employer will be increased. According to the current rules, the minimum amount taken into consideration for calculation of social contributions is equal to the minimum wage, while the maximum amount shall be increased in proportion with the increase of the minimum amount.

### 2019 FISCAL PACKAGE

*On the 3<sup>rd</sup> of December 2018, the Parliament passed the so-called "2019 Fiscal Package".*

Below you will find a summary of the most important amendments introduced by the Fiscal Package to several tax laws.

### Income Tax Law (law no. 8438/1998 "On Income Tax")

Law no. 94/2018 "On some amendments and additions to law no. 8438/1998 "On Income Tax" (published in the Official Gazette no. 183, dated 21.12.2018), provides for the following amendments:

#### *New items of Albanian source income*

Additional income shall be included in the list of Albanian source income, becoming as such subject to taxation in Albania:

- i) income from immovable properties, their accessories and civil fruits, as well as the income deriving from the rights on immovable properties situated in the Republic of Albania;
- ii) income generated out of the exercise of rights for exploitation of minerals, hydrocarbons or other rights for exploitation of other natural resources within the territorial sovereignty of the Republic of Albania;

## BOGA & ASSOCIATES

- iii) income from alienation of property and rights stated above;
- iv) income from alienation of shares or similar interest, such as interests in partnerships or trusts, regardless of the place of registration, in case, at any time during a period 365 days preceding the alienation, more than 50 per cent of the value of these shares or similar interest derives directly or indirectly from the immovable property or the rights as mentioned herein above.

### *Application of withholding tax on payment for services*

Currently, according to article 4, letter h) of the Income Tax Law, the income generated by a non-resident person from services rendered in the territory of the Republic of Albania are considered as Albanian source income. When such income falls under the list of payments set forth in article 33 of Income Tax Law (such as technical services etc.), they are subject to withholding tax (currently at 15% rate).

Services rendered by a non-resident person out of Albanian territory (provided that such fact is supported with the relevant financial and technical documentation) are not deemed as Albanian source income, in which case withholding tax does not apply.

Under the amended provision, all those payments listed in article 33 of the Income Tax Law, which are performed by an Albanian resident to a non-resident person as a result of the rendered services are deemed as Albanian source income. Thus, they become subject to withholding tax.

### *Reduction of tax on dividend*

The tax on dividends and profit sharing has been reduced to 8% (from 15%). The reduced 8% rate shall also apply for dividends distributed from retained earnings generated during the year 2018 and earlier, provided that

the tax on dividend deriving from the profit generated in the year 2017 and previous years is paid within 30 September 2019, while the tax on dividend from the profit generated on year 2018 is paid within 20 August 2019.

### *Reduction of income tax on employment related income*

Under the amended provision, the tax rate of 23% shall be applied on the new limit of Leke 150,000. As a result, monthly wages from Leke 30,001 to Leke 150,000 shall be subject to a tax equal to 13% of the amount over Leke 30,000. Monthly wages from Leke 150,001 and above shall be now subject to a tax equal to the amount of Leke 15,600 plus 23% of the amount over Leke 150,000.

Monthly wages up to Leke 30,000 remain exempted from tax.

### *New item of non-deductible expense*

“Per diem expenses that exceed 50% of the amount of annual gross wages’ expenditure of the taxpayer” is added to the list of non-deductible expenses for profit tax purposes.

### *Registration of a non-resident for profit tax purposes*

It is now possible for a non-resident person to be registered for profit tax in Albania and file a profit tax return, in order to enable him to declare and pay tax in Albania. A forthcoming instruction of the Minister of Finance will determine the form and content of the said tax return. The tax return shall be filed by 31<sup>st</sup> of March of next year. The tax is due by the same date.

The non-resident person shall not be required to make any tax prepayments and it is not permitted to any foreign tax credits.

### *Taxation of capital gains*

- a) *Legal entities whose ownership changes by more than 20%*

Capital gains become taxable when the following conditions are met:

## BOGA & ASSOCIATES

- there is a change of ownership of the share capital or voting rights held in a legal entity, either directly or indirectly, by more than 20%; and
- such legal entity has generated an average annual turnover in the previous three years of Leke 500 million.

Taxation of capital gains under such conditions is applicable irrespective of whether the shares' value derives directly or indirectly from immovable property or rights of exploiting natural resources situated in Albania, or not.

The legal entity must submit a written notification to tax authorities within 45 days from the transfer of ownership.

Payment of the capital gain tax is performed by the legal entity, which for this purpose is deemed to have sold a proportional part (equal to the amount of transfer of ownership in shares or voting rights) of all its assets immediately before the transfer. Such legal entity shall be considered as beneficiary of the income from sale of assets (proportionally with the market value of the assets), and as buyer of those assets at the same value.

When the tax on capital gain is paid by the legal entity as per the above rules, the shareholder or holder of voting rights subject to transfer, is exempted from profit tax in Albania.

Failure to comply with the above procedures is subject to a fine equal to 15% of the market value of the assets deemed as transferred.

- b) *Taxation of capital gains occurring from change of ownership by more than 10% of shares, whose value derives from immovable property situated in Albania*

Under the new provisions, a notification is to be made in case of change of ownership of the share capital of a legal entity, either directly or indirectly, by more than 10%, provided that more than 50 per cent of the value of such shares, at any time for 365 days preceding the

transfer, derives directly or indirectly from the immovable property, or the rights of exploitation of natural resources, which are situated in Albania. The legal entity must submit the notification to the tax authorities within 45 days from the said transfer.

The tax on capital gains in such cases shall be declared and paid by the transferor, by filing a profit tax return as a non-resident person.

Failure to comply with the above procedures is subject to a fine equal to 5% of the market value of the shares/similar interest transferred.

The new law shall become effective as of 1 January 2019.

### **Excise Tax Law (law no. 61/2012 “On Excise Tax”)**

Excise Tax Law is amended by law no. 98/2018 “On some amendments and additions to law no. 61/2012 “On Excise Tax” by introducing the excise tax for the following goods:

- bituminous gravel at the rate of 0.3 Leke/kg;
- heated tobacco at the rate of 6,000 Leke/kg.

The excise tax for energy drinks (previously at the rate of Leke 30/liter) has been removed.

The amendments provide also for the increase of the excise tax rate to 6,000 Leke/kg for cigars and cigarillos that contain tobacco or tobacco substitutes (except if manufactured with tobacco cultivated in Albania). Excise tax for cigarettes has been increased to 6,000 Leke per 1,000 pieces.

In addition, penalties applicable in case of breaches to the Excise Tax Law have undergone some amendments.

The amending law is expected to enter into force as of 1 January 2019.

# BOGA & ASSOCIATES

## **Tax Procedures Law (Law no. 9920/2008 "On Tax Procedures")**

Law no. 97/2018 amended law no. 9920/2008 "On Tax Procedures" as follows:

### *A unique business registration number for each taxpayer*

The new provisions clarify that entrepreneurs registered with the Commercial Register as sole entrepreneurs ("*person fizik tregtar*") may obtain only one (unique) business registration number. If such person conducts business in more than one location, the Commercial Register will issue to this person a business registration certificate for the secondary addresses with the same business number.

### *Suspension of business activity*

In case of application with the Commercial Register for suspension of activity (dormant taxpayers transferred into passive status), the Register will accept the application only if the applicant has no outstanding tax obligations. If there is any existing obligation, the application is rejected.

### *Penalties for supplies to and from dormant taxpayers (in passive status)*

The amended law imposes specific penalties for the taxpayers who enter into transactions with dormant taxpayers. Both the seller and the buyer are subject to penalties. However, in cases when the buyer is a dormant taxpayer, no penalty shall be imposed if the list of dormant taxpayers is not duly updated by the tax authorities.

### *De-registration of taxpayers*

The new law determines new rules for the procedure of de-registration of taxpayers from the Commercial Register and tax authorities aiming to simplify the procedures and to reduce the time needed to finalize the de-registration process.

### *Penalties for incorrect declaration*

Currently, reassessment of a tax credit balance is not subject to any penalty. According to the amendment, in case the credit balance is reduced following a tax audit, a penalty equal to 20% of the reduced amount shall apply.

### *General anti-abuse rule*

One of the most important changes is the introduction of the "general anti-abuse rule".

According to the new provisions, the tax authorities shall disregard an arrangement or a series of arrangements which:

- i) is/are made to circumvent the principles of tax laws;
- ii) does/do not reflect the economic reality;
- iii) is/are not genuine having regard to all relevant facts and circumstances;
- iv) is/are not made for valid commercial reasons;
- v) is/are made to obtain a tax advantage.

Tax authorities may use alternative assessment methods to recharacterize the transaction and assess the tax obligation. The tax authorities have the burden of proof that the arrangement is abusive.

### *No payment of interest as a condition for filing a tax appeal*

The new law abrogates the payment of interest as a condition for filing a tax appeal. As a result, taxpayers shall be required to prepay only the amount of principal, before the commencement of the appeal process.

The new law is expected to enter into force as of 1 January 2019.

## **Value Added Tax (Law no. 92/2014 "On Value Added Tax")**

The law no. 96/2018 "On some amendments and additions on the law no. 92/2014 "On Value Added Tax" introduced a reduced Value Added Tax rate for the following supplies:

## BOGA & ASSOCIATES

- provision of advertising services from audiovisual media is reduced to 6%;
- supply of electric buses for public transport is reduced to 6% until 31.12.2021, and thereafter it will be increased to 10%;
- supply of books of any type is reduced to 6%.

The list of VAT exempt supplies is also extended to cover:

- the supply of agricultural machineries (the list of machineries is to be defined by a decision of the Council of Ministers);
- the supply of agriculture's inputs like seeds, fertilizers, agrochemicals (except hormones classified under nomenclature code 2937). Same as above, the list of categories will be defined by a decision of the Council of Ministers;
- the supply of veterinary services, except from veterinary services to pets;
- the supply of services by subcontractors of contractors engaged in the inward processing regime (the service of processing of non-Albanian goods for re-exportation), and
- the import of raw materials used for the production of drugs from authorized pharmaceutical production factories (the list of materials is to be defined by decision of the Council of Ministers).

The new law is expected to enter into force as of 1 January 2019.

### **National Taxes (Law no. 9975/2008 "On National Taxes")**

Changes have been introduced also to the national tax systems (upon law no. 93/2018).

It is worth mentioning that the tax on plastic and glass packaging will be substituted with a tax on plastic materials (levied upon certain goods as set out in the law).

In addition, the royalty tax payable for local supplies of metallic minerals shall be lower than the royalty tax payable in case the same minerals are exported.

The new law is expected to enter into force as of 1 January 2019.

### **Local Taxes (Law no. 9632/2006 "On Local Tax System")**

Law no. 95/2018 amending Law no. 9632/2006 "On Local Tax System" intends to clarify the application of the tax on infrastructure from new constructions and the advertisement/billboard tax.

In addition, under the amending law, the tax on infrastructure from new constructions is reduced and becomes subject to 0% up to 3% of the investment value for new constructions in the mountain regions (the boundaries of the specific region to be defined by the respective municipality council).

The new law is expected to enter into force as of 1 January 2019.

# BOGA & ASSOCIATES

If you wish to know more on issues highlighted in this edition, you may approach your usual contact at our firm or the following:

[info@bogalaw.com](mailto:info@bogalaw.com)

## **Tirana Office**

40/3 Ibrahim Rugova Str.  
1019 Tirana  
Albania  
Tel +355 4 225 1050  
Fax +355 4 225 1055

## **Pristina Office**

27/5 Nene Tereza Str.  
10000 Pristina  
Kosovo  
Tel +383 38 223 152  
Fax +383 38 223 153

---

## **BOGA & ASSOCIATES TOP TIER ACHIEVEMENTS 2018**

---

**IFLR1000 2019:** Ranked in Tier 1 in Financial and  
Corporate and Project Development

**Chambers Global 2018:** Ranked in Band 1 in  
General Business Law

**Chambers Europe 2018:** Top Ranked in 5 practice  
areas

**The Legal 500 2018:** Ranked in Tier 1 in Legal  
Market Overview

The Tax Alert is an electronic publication edited and provided by Boga & Associates to its clients and business partners. The information contained in this publication is of a general nature and is not intended to address the circumstances of any particular individual or entity. The Tax Alert is not intended to be and should not be construed as providing legal advice. Therefore, no one should act on such information without appropriate professional advice after a thorough examination of the particular situation. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. You can also consult the Tax Alert on the section "Library" of our website.

© 2018 Boga & Associates. All rights reserved.

This publication is copyrighted and is protected to the full extent of the law. Nevertheless, you are free to copy and redistribute it on the condition that full attribution is made to Boga & Associates. If you have not received this publication directly from us, you may obtain a copy of any past or future related publications from our marketing department ([marketing@bogalaw.com](mailto:marketing@bogalaw.com)) or consult them in our website ([www.bogalaw.com](http://www.bogalaw.com)). To unsubscribe from future publications of Tax Alert, please send "Unsubscribe" by replying to our email accompanying this edition.

## Boga & Associates

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 the Senior Partner/Managing Partner of KPMG Albania.

The firm's particularity is linked to the multidisciplinary services it provides to its clients, through an uncompromising commitment to excellence. Apart from the widely consolidated legal practice, the firm also offers the highest standards of expertise in tax and accounting services, with keen sensitivity to the rapid changes in the Albanian and Kosovo business environment. The firm delivers services to leading clients in major industries, banks and financial institutions, as well as to 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.