

The International Comparative Legal Guide to: Corporate Tax 2011

A practical cross-border
insight to corporate tax work

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Kosovo



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1 General: Treaties

1.1 How many income tax treaties are currently in force in Kosovo?

Kosovo has concluded only one tax treaty. It was entered into with the Republic of Albania and has been in force since 2006.

1.2 Do they generally follow the OECD or another model?

The treaty follows the OECD model.

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

Tax treaties must be ratified by Parliament. A treaty ratified by Parliament becomes a part of the Kosovo legal system after publication in the Official Gazette and prevails over any law which differs from the treaty's provisions.

1.4 Do they generally incorporate anti-treaty shopping rules (or "limitation of benefits" articles)?

The treaty does 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)?

The treaty prevails over domestic law regardless of whether the domestic legislation existed previously or is introduced subsequently to it.

2 Transaction Taxes

2.1 Are there any documentary taxes in Kosovo?

No, there are no documentary taxes in Kosovo.

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

Kosovo has introduced VAT in 2001. Currently, the VAT rate is 16%; exports are zero-rated. A new Law "On VAT", which is in line

with the EU Directive on VAT, entered into force on 1 July 2010. The turnover threshold for registration purposes is set to EUR 50,000.

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

The following activities are VAT-exempt:

- insurance and reinsurance transactions;
- financial services;
- the supply of postage stamps, fiscal stamps and other similar stamps;
- betting, lotteries and other forms of gambling;
- the supply of land or land on which a building or house stands;
- the supply of houses, apartments or other accommodation used for residential purpose; and
- the leasing or letting of immovable property.

Other exemptions are provided on importation, exportation and services related to international transport of goods and passengers.

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 with taxable activity. When taxpayers make both taxable and exempted supplies, VAT may be reclaimed partially.

VAT can not be reclaimed on certain recreation expenses and representation costs and it is limited on car expenses not used only for business purposes.

2.5 Are there any other transaction taxes?

Excise tax apply to a limited number of goods such as coffee, tobacco, alcoholic drinks, soft drinks, derivatives of petroleum and motor vehicles, mainly for transport of passengers.

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

Except from excise and customs duties, there are no other indirect taxes.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

No, there is no withholding tax on dividends distributed from a Kosovo resident company.

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Yes. There is a 10% withholding tax on royalties paid by a Kosovo company to a non-resident.

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

Yes. There is a 10% withholding tax on interest paid by a Kosovo company to a non-resident.

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

No, there are no "thin capitalisation" or similar rules.

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

No, there is no any provision on this regard.

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

As indicated in question 3.4, there are no "thin capitalisation" rules in place.

3.7 Are there any restrictions on tax relief for interest payments by a local company to a non-resident in addition to any thin capitalisation rules mentioned in questions 3.4-3.6 above?

No, there are no restrictions.

3.8 Does Kosovo have transfer pricing rules?

Corporate Income Tax Law provides that the prices between related parties should be carried out at open market value. Such value should be determined under the uncontrolled price method, and when this is not possible, the resale price method or the cost-plus method.

4 Tax on Business Operations: General

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

Kosovo Corporate Income Tax Law provides for a flat rate of 10%.

4.2 When is that tax generally payable?

The tax is payable on quarterly advance payments and final settlement is made on or before 31 March of the following year upon submission of financial statements.

4.3 What is the tax base for that tax (profits pursuant to commercial accounts subject to adjustments; other tax base)?

The taxable base is calculated starting from the profit shown in the financial statements, adjusted in accordance with the limitation provided in Corporate Income Law.

4.4 If it otherwise differs from the profit shown in commercial accounts, what are the main other differences?

The Corporate Income Law provides a list of expenses that are non-deductible for tax purposes, consisting of:

- fines and penalties;
- income tax paid or accrued for the current or previous tax period and any interest or late penalty incurred for late payment of it;
- any loss from the sale or exchange of property between related persons;
- pension contributions above the maximum amount allowed by the Kosovo Pension Law;
- bad debts that do not meet the certain conditions;
- contributions made for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes, which exceed five per cent (5%) of taxable income (before the deduction of such expenses);
- representation costs (these include publicity, advertising, entertainment and representation), which exceed two per cent (2%) of total gross income; and
- accrued expense for which the withholding tax should be paid unless such expense is paid on or before 31 March of the subsequent tax period.

4.5 Are there any tax grouping rules? Do these allow for relief in Kosovo for losses of overseas subsidiaries?

No, there are no tax-grouping rules.

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 What other national taxes (excluding those dealt with in "Transaction Taxes", above) are there - e.g. property taxes, etc.?

Yes, there are property taxes in Kosovo. All persons that own, use or occupy immovable property are subject to tax on real estate. The annual tax rates may vary between 0.05% and 1% of the market value of the real estate depending on the location.

4.8 Are there any local taxes not dealt with in answers to other questions?

No, there are not.

5 Capital Gains

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

Yes, Corporate Income Law indicates the rules applicable to capital gain. As a general rule, capital gains and losses are treated as ordinary income/losses from economic activity. Capital gains are not recognised for fixed assets which are depreciated in a pool and purchased prior to 1 January 2010.

5.2 If so, is the rate of tax imposed upon capital gains different from the rate imposed upon business profits?

Capital gains are taxed at the same rate as business profit.

5.3 Is there a participation exemption?

No, there is no any exemption.

5.4 Is there any special relief for reinvestment?

No, there is no relief for reinvestment.

6 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 formation of subsidiaries.

6.2 Are there any other significant taxes or fees that would be incurred by a locally formed subsidiary but not by a branch of a non-resident company?

No, there are no such taxes or fees.

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

Branches are taxed only on the taxable income from a Kosovo source of income. The taxable income is determined in the same manner as for resident companies.

6.4 Would such a branch be subject to a branch profits tax (or other tax limited to branches of non-resident companies)?

There are no such branch profit taxes. Taxable income of branches is subject to Corporate Income Tax at the same rate of 10%.

6.5 Would a branch benefit from tax treaty provisions, or some of them?

Branches have the same treatment under the local legislation.

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

No, there is no withholding tax or other tax in regard of remittance of profit by the branch.

7 Anti-avoidance

7.1 How does Kosovo address the issue of preventing tax avoidance? For example, is there a general anti-avoidance rule or a disclosure rule imposing a requirement to disclose avoidance schemes in advance of the company's tax return being submitted?

Tax Procedure Law provides for the right of tax authorities to disregard and re-characterise a transaction or element of the transaction that does not have a substantial economic effect, where the form of the transaction does not reflect its economic substance and was entered into as part of a scheme to avoid a tax liability.

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Since 1999 Mrs. Uruçi focused her practice on tax and customs laws in all industries and sectors in Albania. With her double major studies background in Law and Economics, Alketa has acquired solid understanding and experience in tax legislation and its impact and interaction with other legal framework, such as labour and employment, commercial companies law, real estate and construction.

Her practice areas encompass corporate tax, VAT, national taxes, local taxes, personal income tax, excise tax and customs duties. Alketa advises and manages tax assignments in all industries and sectors such as aviation, banking and financial institutions, cement, consumer goods, construction and real estate, telecommunications, etc.

Alketa is active as tax litigator in all levels of Albanian courts, where she represents the clients during judiciary claims against the tax assessments and tax authorities.

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Mr. Andi Pacani has developed solid experience in accounting, tax and regulatory framework, with a very good experience in the application of accounting regulations (national and international standards), corporate tax law and other fiscal laws, by being involved in assignments providing any tax and accounting assistance to clients seeking to operate and engage in business activities in Albania and Kosovo.

Mr. Pacani graduated from the University of Tirana, Faculty of Economy in Business Administration, in 1999. In 2005, Mr. Pacani obtained a licence as an Approved Accountant.

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Boga & Associates, established in Tirana, Albania in 1994, has emerged as one of the premiere law firms in Albania, earning a reputation for providing the highest quality in legal, tax and accounting services to its clients. Boga & Associates has operated for many years in Kosovo (Pristina), offering a full range of services.

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