

The International Comparative Legal Guide to: Corporate Tax 2012

A practical cross-border
insight to corporate tax work

Published by Global Legal Group with
contributions from:

Aivar Pilv Law Office
ALMT Legal
Arqués Ribert Junyer Advocats
Avanzia Taxand Limited
Bugge, Arentz-Hansen & Rasmussen (BA-HR)
Banwo & Ighodalo
B.C. Toms & Co.
Boga & Associates
Bredin Prat
CBA Studio Legale e Tributario
Clifford Chance LLP
Cuatrecasas, Gonçalves Pereira
Debarliev, Dameski & Kelesoska Attorneys at Law
Dorda Brugger Jordis
Dr. K. Chrysostomides & Co LLC
Elvinger, Hoss & Prussen
Georgiev, Todorov & Co.
Gide Loyrette Nouel Warsaw Office
Gorrissen Federspiel
Greenwoods & Freehills
Hannes Snellman Attorneys Ltd
Hendersen Taxand
Herzog Fox & Neeman
Juridicon Law Firm
KALO & ASSOCIATES
KGDI Law Firm
Leitner + Leitner, d.o.o.
Lenz & Staehlin
LOGOS legal services
McCann FitzGerald
Nagashima Ohno & Tsunematsu
Negri & Teijeiro Abogados
Nithya Partners
Pachiu & Associates
P+P Pöllath + Partners
Proskauer Rose LLP
Salans
Schulte Roth & Zabel LLP
Slaughter and May
Thorsteinssons LLP
White & Case LLP
Yoon & Yang LLC

The International Comparative Legal Guide to: Corporate Tax 2012

GLG

Global Legal Group

Contributing Editor

William Watson,
Slaughter and May

Account Managers

Monica Fuertes, Dror
Levy, Florjan Osmani,
Oliver Smith, Rory Smith,
Toni Wyatt

Sub Editors

Suzie Kidd
Jodie Mablin

Senior Editor

Penny Smale

Managing Editor

Alan Falach

Group Publisher

Richard Firth

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

Cover Design

F&F Studio Design

GLG Cover Image Source

Stock.XCHNG

Printed by

Information Press Ltd
October 2011

Copyright © 2011
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-908070-11-1
ISSN 1743-3371



General Chapters:

1	UK Holding Companies and CFC Reform - William Watson, Slaughter and May	1
2	Gazing in the Crystal Ball: The State of Corporate Tax Reform in the United States - Dan A. Kusnetz, Schulte Roth & Zabel LLP	5

Country Question and Answer Chapters:

3	Albania	KALO & ASSOCIATES: Aigest Milo & Ardjana Shehi	15
4	Andorra	Arqués Ribert Junyer Advocats: Daniel Arqués i Tomàs & Mireia Ribó i Bregolat	19
5	Argentina	Negri & Teijeiro Abogados: Guillermo O. Teijeiro & Ana Lucia Ferreyra	25
6	Australia	Greenwoods & Freehills: Adrian O'Shannessy & Andrew Mills	33
7	Austria	Dorda Brugger Jordis: Paul Doralt & Martina Znidaric	39
8	Belgium	Clifford Chance LLP: Thierry Blockerye & Pierre-Olivier van Caubergh	45
9	Bulgaria	Georgiev, Todorov & Co.: Georgi Kostolov	53
10	Canada	Thorsteinssons LLP: Michael Colborne & Michael McLaren	58
11	China	Hendersen Taxand: Dennis Xu & Eddie Wang	63
12	Cyprus	Dr. K. Chrysostomides & Co LLC: Dr. Kypros Chrysostomides & George Ioannou	68
13	Czech Republic	Salans: Petr Kotáb	72
14	Denmark	Gorissen Federspiel: Lars Fogh & Jakob Skaadstrup Andersen	78
15	Estonia	Aivar Pilv Law Office: Jaak Siim & Ilmar-Erik Aavakivi	84
16	Finland	Hannes Snellman Attorneys Ltd: Ossi Haapaniemi & Outi Raitasuo	92
17	France	Bredin Prat: Yves Rutschmann & Marion Méresse	97
18	Germany	P+P Pöhlath + Partners: Richard Engl & Gerhard Specker	103
19	Greece	KGDI Law Firm: Elisabeth Eleftheriades & Panagiotis Pothos	109
20	Iceland	LOGOS legal services: Bjarnfredur Olafsson	116
21	India	ALMT Legal: Aliff Fazelbhojy & Astha Chandra	120
22	Ireland	McCann FitzGerald: Michael Ryan & Eleanor MacDonagh	126
23	Israel	Herzog Fox & Neeman: Meir Linzen & Eldar Ben-Ruby	132
24	Italy	CBA Studio Legale e Tributario: Paolo Omodeo Salè & Nicoletta Mazzitelli	138
25	Japan	Nagashima Ohno & Tsunematsu: Yuko Miyazaki	145
26	Korea	Yoon & Yang LLC: Seung-Soon Lim & Tae-Hwan Oh	152
27	Kosovo	Boga & Associates: Alketa Uruçi & Andi Pacani	158
28	Lithuania	Juridicon Law Firm: Laimonas Marcinkevičius & Ingrida Steponavičienė	162
29	Luxembourg	Elvinger, Hoss & Prussen: Pierre Elvinger & Dirk Richter	170
30	Macedonia	Debarliev, Dameski & Kelesoska Attorneys at Law: Dragan Dameski	177
31	Malta	Avanzia Taxand Limited: Walter Cutajar & Mary Anne Inguanez	181
32	Nigeria	Banwo & Ighodalo: Abimbola Akeredolu & Dipo Okuribido	188
33	Norway	Bugge, Arentz-Hansen & Rasmussen (BA-HR): Frode Talmo & Joachim M Bjerke	192
34	Poland	Gide Loyrette Nouel Warsaw Office: Ewa Opalińska & Maciej Grela	198
35	Romania	Pachiu & Associates: Andrei Dumitrache & Vlad Rădoi	203
36	Slovakia	White & Case LLP: Matej Firický & Tomáš Cibul'a	210
37	Slovenia	Leitner + Leitner, d.o.o.: Blaž Pate	215
38	Spain	Cuatrecasas, Gonçalves Pereira: Alejandro Escoda & Andreas Trost	220
39	Sri Lanka	Nithya Partners: Naomal Goonewardena & Sheranka Madanayake	227
40	Switzerland	Lenz & Staehlin: Heini Rüdisühli & Jean-Blaise Eckert	232
41	Ukraine	B.C. Toms & Co: Bate C. Toms & Mykhailo Razuvaiev	240
42	United Kingdom	Slaughter and May: William Watson & Zoe Andrews	247
43	USA	Proskauer Rose LLP: Stuart L. Rosow & Amanda H. Nussbaum	253
44	Vietnam	Gide Loyrette Nouel A.A.R.P.I.: Samantha Campbell & Phan Thi Lieu	261

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

Kosovo

Boga & Associates

Alketa Uruçi



Andi Pacani



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-exempted:

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

VAT cannot 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 the transport of passengers.

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

Except for 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 other restrictions on tax relief for interest payments by a local company to a non-resident?

No, there are not.

3.8 Does Kosovo have transfer pricing rules?

Corporate Income Tax Law provides that the prices between related parties should be fixed 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. Additional rules are provided for by an administrative instruction.

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 specified 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 Are companies subject to any other national taxes (excluding those dealt with in "Transaction Taxes") - e.g. tax on the occupation of property?

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 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 01.01.2010.

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 not any exemption.

5.4 Is there any special relief for reinvestment?

No, there is no relief for reinvestment.

6 Local 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 Overseas Profits

7.1 Does Kosovo tax profits earned in overseas branches?

Foreign-sourced income is taxable in Kosovo. However, tax credit is allowable for the amount of income tax paid overseas for the income derived abroad.

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

No, dividends distributed by a non-resident to a local company are exempted income.

7.3 Does Kosovo have "controlled foreign company" rules and if so when do these apply?

No, there are no "controlled foreign company" rules.

8 Anti-avoidance

8.1 Does Kosovo have a general anti-avoidance rule?

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.

8.2 Is there a requirement to make special disclosure of avoidance schemes?

No, there are no requirements to disclose avoidance schemes.

**Alketa Uruçi**

Boga & Associates
Deshmoret e 4 Shkurtit Str.
P.O. Box 8264, Tirana
Albania

Tel: +355 4 22 510 50
Fax: +355 4 22 510 55
Email: auruci@bogalaw.com
URL: www.bogalaw.com

Since 1999, Alketa has focused her practice on tax and customs laws in all industries and sectors in Albania and Kosovo. 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.

**Andi Pacani**

Boga & Associates
Deshmoret e 4 Shkurtit Str.
P.O. Box 8264, Tirana
Albania

Tel: +355 4 22 510 50
Fax: +355 4 22 510 55
Email: apacani@bogalaw.com
URL: www.bogalaw.com

Andi 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.

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

BOGA & ASSOCIATES

LEGAL • TAX • ACCOUNTING

Boga & Associates, established 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 also operates in Kosovo (Pristina) offering full range of services.

The firm provides services to a broad spectrum of regional and local organisations, including private and public companies, partnerships and government agencies, as well as not for profit organisations. 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 International Comparative Legal Guide to: Corporate Tax 2012

Other titles in the ICLG series include:

- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Commodities and Trade Law
- Competition Litigation
- Corporate Governance
- Corporate Recovery & Insolvency
- Dominance
- Employment & Labour Law
- Enforcement of Competition Law
- Environment & Climate Change Law
- Gas Regulation
- Insurance & Reinsurance
- International Arbitration
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Patents
- PFI / PPP Projects
- Pharmaceutical Advertising
- Private Client Law
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Telecommunication Laws and Regulations
- Trademarks

To order a copy of a publication, please contact:

Global Legal Group
59 Tanner Street
London SE1 3PL
United Kingdom
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk