



ICLG

The International Comparative Legal Guide to:

Corporate Tax 2013

9th Edition

A practical cross-border insight into corporate tax work

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Albania

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1 Tax Treaties and Residence

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

Albania has concluded tax treaties with 36 countries (out of which 34 are already in force).

1.2 Do they generally follow the OECD or another model?

Albanian tax treaties follow the OECD model.

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

Albanian constitution requires treaties to be ratified by the Parliament.

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

The treaties do 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)?

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

1.6 What is the test in domestic law for determining corporate residence?

Entities that are established in Albania or have the place of effective management in Albania are considered resident.

2 Transaction Taxes

2.1 Are there any documentary taxes in Albania?

No, there are no documentary taxes in Albania.

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

Yes, VAT was brought in first in 1995. The standard rate of VAT is 20%, which applies to all persons (companies and entrepreneurs) having an annual turnover exceeding 5 million Leke (approx. 35,000 Euro). Exceptionally, some specific categories of activities (such as lawyers, economists, auditors, doctors, dentists) are VAT tax-payers irrespective of their annual turnover (i.e. there is no VAT threshold).

There are exceptions to the standard rate as regards to medical services and medicaments at the reduced rate of 10% and exports of goods and international transport of goods and passengers and related services which are subject to VAT at 0% (VAT exemption with right of deduction).

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

VAT regulations provide for supplies exempt from VAT without right of deduction. The most important are as follows:

- Lease and sale of land.
- Sale of buildings.
- Long lease of buildings (when the lease duration exceeds two months).
- Financial services.
- Certain services rendered by not-for-profit organisations.
- Educational services rendered by private and public educational institutions.
- Postal services.
- Certain supplies in connection with oil exploration.
- Supply of newspapers, magazines and books of any kind.
- Supply of advertising in electronic and written media.
- Supply of services performed outside Albania by a taxable person whose place of activity or residence is in Albania.
- Supply of services relating to gambling activities, casinos and hippodromes.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

Generally, tax-payers registered for VAT are entitled to recover the input VAT, provided that the VAT is charged in relation with their taxable activity. VAT cannot be reclaimed on recreation and

accommodation expenses, passenger vehicles, fuel under certain conditions, promotional materials and all expenses related to the above-mentioned expenses.

2.5 Are there any other transaction taxes?

There is a tax on transfer of ownership right on real estate, payable by legal entities in case of sale or donation of real estate.

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

Except for VAT and excise, carbon and circulation tax is levied on the production and importation of certain combustible goods (including fuel) in Albania.

3 Cross-border Payments

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

Dividends and profit sharing paid to non-residents are subject to a final withholding tax at a rate of 10%, unless a double tax treaty provides for a lower rate.

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

Royalties paid to non-residents are subject to a final withholding tax at a rate of 10%, unless a double tax treaty provides for a lower rate.

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

Interests paid to non-residents are subject to a final withholding tax at a rate of 10%, unless a double tax treaty provides for a lower rate.

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

The only thin capitalisation rule limits the tax deduction (for corporate income tax purposes) for interest paid on a loan to the portion of interest paid on the loan not exceeding four times the company's net assets (i.e. debt/equity ratio of 4:1). The rule applies to all loans taken, except for short-term loans (less than 1 year). It does not apply to banks, finance leases and insurance companies.

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

There is no such provision in Albanian legislation.

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

The debt/equity ratio is calculated without taking into consideration the source of the financing or relevant guarantees.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

The interest in excess of the annual average bank interest rate is non-deductible for tax purposes.

3.8 Does Albania have transfer pricing rules?

Transfer pricing adjustments may be made if conditions set in a transaction between related persons differ from those that would have been applied between not-related persons. As a general rule, two persons are deemed to be related if the activities of one person are controlled by the other or if one person acts in accordance with the instructions, requests or decisions of the other. In particular, the following are regarded as related-persons: (a) spouses; (b) a legal entity and any person who owns, directly or indirectly, at least 50% of the shares or voting rights in that entity; and (c) two or more legal entities if a third person owns, directly or indirectly, at least 50% of the shares or voting rights in each entity.

The instructions of the Ministry of Finance provide that transfer pricing adjustments may be made only by the Commission of Transfer Pricing in the General Tax Directorate; thus, the tax authorities must submit all transfer pricing cases to the Commission. The instructions also state that, in applying the transfer pricing rules, the commission should refer to the 1995 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

The Commission may enter into an agreement with the tax-payer, which may regulate and determine in advance the transfer pricing methods and modalities. The agreement should be signed by the General Director.

4 Tax on Business Operations: General

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

Since 2008, Albania has applied a flat tax rate of 10%.

4.2 When is that tax generally payable?

The corporate income tax system provides for a prepayment of the tax in monthly instalments by the 15th of each month based on the profit realised in the two previous years. (In the event the tax-payer is in its first year of activity, the instalments are calculated based on the forecast of the profit for the current year.)

On the 31st March of the following year, when all corporate tax subjects are required to file with tax authorities, their profit tax declaration for the previous year, the exact due amount of the tax is reconciled and the difference is paid to the state. Any tax paid in excess through instalments is carried forward or reimbursed.

Starting from 1st January 2013, tax-payers may opt to prepay the corporate income tax on a quarterly basis (at the last day of each quarter).

4.3 Is the tax base accounting profit subject to adjustments, or something else?

Yes, the taxable profit that results from the financial statements prepared under and in pursuance with accounting regulations is adjusted as provided for and required by the tax regulation.

4.4 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

The main adjustments consisting of: depreciation allowances; restrictions related to thin capitalisation of loan interests and other expenses (e.g. thresholds of tax deductions for representation and sponsorship expenses); bad debts requirements; penalties; and provisions expect for the banks and insurance companies, etc.

4.5 Are there any tax grouping rules? Do these allow for relief in Albania 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?

Property tax is levied annually on all residents and non-residents who own agricultural land or buildings in Albania. Agricultural land is classified into ten groups and it is taxed at rates varying from ALL 700 to 5,600 per hectare. Buildings are classified according to their use and taxed at rates ranging from ALL 5 to 200 per m². A 50% tax credit is available for the tax due on buildings located in rural areas. The local municipality may modify the tax rates set by the law. In addition, it decides on the payment schedule of the tax and on reductions for immediate payment of tax.

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

There are a variety of national and local taxes. These include tax in new constructions, hotel tax, royalty tax, advertising tax, etc.

5 Capital Gains

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

There are no specific capital gains taxes for corporate income tax subjects. As a general rule, capital gains are included in the business profit of the entity and taxed at the same rate of 10%.

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

As indicated in question 5.1, capital gain are taxed together with business profit at a rate of 10%.

5.3 Is there a participation exemption for capital gains?

Tax legislation does not provide for a participation exemption for capital gains.

5.4 Is there any special relief for reinvestment?

There is no rollover relief available in Albania.

5.5 Does Albania impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

There is no withholding tax on proceeds of sale of interest in assets/shares.

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 the 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 specifically designed for subsidiary.

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

Branches are taxed only on the taxable income from an Albanian 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 specific taxes for the branch profit. Taxable income of branches is subject to profit tax at the same rate of 10% as with any other Albanian entity.

6.5 Would a branch benefit from double tax relief in its jurisdiction?

Branches are considered as permanent establishment, hence it may benefit from double tax relief.

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

Transfers or repatriation of profits is not subject to any tax in Albania.

7 Overseas Profits

7.1 Does Albania tax profits earned in overseas branches?

Foreign-sourced income is taxable in Albania. However, tax credit is allowable for the amount of income tax paid overseas for the income derived abroad up to the amount that would have been payable in Albania for an Albanian sourced income.

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

Receipt of dividends is tax exempt income in Albania.

7.3 Does Albania have “controlled foreign company” rules and, if so, when do these apply?

No, there are no “controlled foreign company” rules.



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8 Anti-avoidance

8.1 Does Albania have a general anti-avoidance or anti-abuse rule?

Albanian fiscal legislation does not provide for a general anti-avoidance rule. However, it gives tax authorities the right to use alternative methods of tax assessments when verifying the lack of economic substance in a transaction.

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

Under current legislation, there are no requirements to disclose any avoidance scheme.



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