

Dear reader,

In this issue we have reported recent developments to the Albanian legal framework relating to Tax and Competition areas. Within this section are reported also procedural aspects of trademark registration in Kosovo.

Under our editorial “Article” we introduce a general overview concerning the public takeover regime in Albania.

RECENT DEVELOPMENTS

Albania

- *Changes to the Individual Annual Income Tax Declaration Rules*
- *Excise tax to be administered by the General Customs Directorate*
- *Competition Authority to approve block exemptions of vertical agreements*

Kosovo

- *Procedural aspects of trademark registration in Kosovo*

ARTICLE

Albania

- *Public takeover regime explained*

We hope you enjoy reading this issue, and will be glad to welcome any of your queries should they arise in relation to the topics herein contained.

RECENT DEVELOPMENTS

ALBANIA

Tax practice

- *Changes to the Individual Annual Income Tax Declaration Rules*

The Minister of Finance has issued Instruction no. 16, dated 25.07.2012 “On Some Amendments and Changes to Instruction no. 5, dated 30.01.2006 “On Income Tax”, as amended (the “New Instruction”).

The New Instruction is published in the Official Gazette as of 13 August 2012. The changes relate mainly to the individual annual income tax declaration, bringing Instruction no. 5/2006 in line with the changes introduced earlier this year to the Income Tax Law.

Pursuant to the New Instruction, the submission of the annual income tax declaration is mandatory for either residents or non residents whose annual income reaches or exceeds 2 million Leke. The non-residents should declare only the income generated in Albania, whilst the residents the income generated worldwide.

Taxpayers having annual income no more than 1,050,000 Leke may opt to submit the declaration, in which case they may deduct certain expenses from their annual payable income tax, however subject to the following:

- in case of spouses having each an annual income up to 1,050,000 Leke, for purposes of calculation of deductible expenses, the declaration is filled-in by the head of the family only.
- in case the head of the family’s annual income exceed 1,050,000 Leke and the annual income of the spouse is up to 1,050,000 Leke, for purpose of calculating the deductible expenses, the declaration is filled-in by the spouse only.

Based on the New Instruction, the taxpayer is under the obligation to keep the documents that certify the expenses incurred by the taxpayer for 5 years and make them available when so required by the tax authorities.

The declaration can be also completed and submitted by a representative of the person, authorized by means of a power of attorney. It can be submitted in person, by post or electronically. The declaration may be adjusted, without the taxpayer incurring any penalty, but no more than two times and within three months from its initial filing.

The New Instruction provides for detailed rules regarding the tax paid in excess, which based on the request of the taxpayer can be reimbursed or used to compensate tax obligations of the following year. Non residents cannot benefit from the deductible expenses scheme.

Regarding other matters, with respect to the principle of residence, the New Instruction provides for some explanations on the criteria to be considered for purposes of establishing the tax residency of either legal persons or individuals.

Lastly, under the New Instruction, the procedure followed for the declaration of individual income tax, with respect to income designated for the purpose of capital increase shall be applicable regardless of the source of this income, either inside or outside of Albania.

The annual tax return for the year 2011 must be submitted within 30 September 2012.

- ***Excise tax to be administered by the General Customs Directorate***

Law no. 9920, dated 19.05.2008 “On Tax Procedures”, as amended, is recently changed by Law no. 62/2012, dated 24.05.2012 (“the New Law”) with respect to the competencies of the tax administration, following the approval from the Parliament of the new law “On Excise Tax” (law 61/2012).

Administration of the excise tax by the General Tax Directorate and its regional branches shall continue until 1st October 2012. After this date, the excise tax shall be administered by the General Customs Directorate through its customs offices.

Competition & Antitrust

- ***Competition Authority to approve new block exemptions of vertical agreements***

Article 4 of Law no. 9121, dated 28.07.2003 “On Protection of Competition” provides for prohibition of any agreement between undertakings that restricts the competition over the market. The said provision contains a non-exhaustive list of cases constituting a prohibited agreement in the above sense.

On the other hand, Competition Law entitles the Competition Authority to issue rules on block exemption of restrictive agreements in view of the consideration that some of them can improve economic efficiency within a chain of production or distribution by facilitating better coordination between the participating undertakings.

The Authority has drafted the said rules (draft regulation “On the Block Exemption of Categories of Vertical Agreements and Concerted Practices”) and circulated the draft to the stakeholders for their feedback. Below you will find brief information on the requirements of the said draft regulation.

The draft Regulation describes certain types of agreements and contains certain requirements that must be fulfilled so that a particular vertical agreement is exempted from the prohibition of Article 4 of the Competition Law. Such requirements include but are not limited to the (i) market share cap of 30 % for both suppliers and buyers (ii) prohibition of direct or indirect non-compete obligation to be indefinite or exceed five years (iii) prohibition of direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell goods or services etc.

The draft Regulation aims to harmonize the competition legislation with the provisions of EC Regulation no. 330/2010.

The text of the regulation is not yet published in the website of the Authority, though it is indicated that the Competition Authority approved the regulation on 19.07.2012 upon decision no. 234.

KOSOVO

Procedural aspects of trademark registration in Kosovo

On August 14, 2012 the Ministry of Trade and Industry approved the Administrative Instruction no. 13/2012 on Trademark Registration (“the Instruction”). This Administrative Instruction repeals Instruction nr. 2007/13 “On the procedures for trademark registration”.

Purpose of the Instruction

The purpose is to set out the registration procedures for trademark registration at the Industrial Property Office of Kosovo (IPO), regulating such matters as application, registration, objection, publication, and changes in the trademarks register, separation of the application or registration, transfer of the right, registration of licenses, renewal and termination of validity. The Instruction provides for detailed rules and procedures concerning the application of all these measures.

Type of trademarks

The Instruction makes explicit reference and provides specific rules for the following categories of trademarks: verbal, figurative, three-dimensional trademarks and trademarks consisting of colour or combinations of colours.

The rest of the categories are mentioned as *other types of signs* that need to be clearly specified in the application. Nevertheless pursuant to the Instruction goods or services will be grouped by classes of the Nice Classification. Therefore the Instruction advises the use, wherever possible of phrases and terms that appear in the alphabetical list of goods and services of the Nice Classification.

Registration procedures

The process starts by the publication of the application, and if no objections arise therein, the trademark will be registered in the Trademark Register, following which a request for obtaining the trademark certificate may be filed. Information on this registration will then be published in the official bulletin of IPO. IPO will also record, upon request of the competent authority, whether the owner of the trademark is involved in any bankruptcy proceedings or if any enforcement order is issued in relation to the said trademark.

International dimension

The Instruction provides rules on the application for international registration of trademarks as well as on the registration of the (EU) Community trademark. However the provisions regulating the above aspects will enter into force only after the signing of the Madrid Agreement and/or Madrid Protocol by the Republic of Kosovo and after the membership of the Republic of Kosovo in the EU, respectively.

ARTICLE

Public takeover regime explained

Contributed by Ms. Renata Leka as first published in ILO

Public takeovers in Albania are regulated by Law 10236/2010. The law applies to publicly declared offers to obtain ownership of securities issued by a public company in exchange for cash or other considerations. It lays out rules relating to the conditions and procedures for taking control of public joint stock companies eligible to participate in a public takeover. The law provides no restrictions with respect to the nationality of such companies. Hence, not only Albanian companies, but also foreign companies, are eligible to participate in a public takeover, as long as they are listed and admitted to trade on Albania's organized securities market. However, offers relating to securities issued by companies dealing with the collective investment of capital, as well as securities issued by the Bank of Albania, are exempt from the law's scope of application.

The takeover of a public company is initiated by a third party interested in owning securities in the target. The offeror can be either a natural or legal person. Pursuant to the law, the offer to take control of the target is addressed to all shareholders and for all shares. Control is granted through ownership of 30% or more of the voting rights in the target. This position of control does not affect the other security holders, whose protection is guaranteed. Nevertheless, when an offer that would result in a situation of control triggers the obligation to notify the Financial Supervisory Authority (FSA), the FSA's prior approval of the offer and the offer document is required.

The offer document provides essential information with respect to the offer - in particular, whether the offeror already holds securities in the target.

On approval, the offer and the offer document are made public through the National Registration Centre. The timeframe for the target to approve the offer is between three and 10 weeks from publication of the offer document. In the event that an offeror (solely or together with other persons) acquires securities in a target that, when combined with previously owned securities, results in control over the target, it is obliged to make an offer to the owners of the remaining securities. However, if this acquisition of shares does not amount to control of the target, then the offeror need not make an offer and is obliged only to notify the FSA within 10 days.

If the offeror obtains control of at least 90% of the capital and the voting rights of the company, then within three months from termination of the term provided for the offer's approval, it must request that the remaining shareholders sell their shares, on condition that such an intention was mentioned in the offer document. In the same scenario, the remaining shareholders have the right to request the purchase of their shares.

Finally, the law can be applied in an international dimension – for example, when the joint stock company is registered in Albania and operates in a stock market abroad or the vice versa. In the latter case, although registered abroad, if the company is listed on the stock market in Albania (with some exceptions) most procedural provisions of the law remain applicable.

The law also attributes an important role to the rights of employees with respect to their protection and their inclusion in the decision-making process.

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: infocus@bogalaw.com.

Tirana Office

Ibrahim Rugova Str.
P.O. Box 8264
Tirana, Albania
T: +355 4 225 1050/225 1022
F: +355 4 225 1055

Pristina Office

Nene Tereza Str.
Entry 30, No. 5
Pristina, Kosovo
T: +381 38 223 152
F: +381 38 223 153
Web: www.bogalaw.com

“In Focus” 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. “In Focus” is not intended to be and should not be construed as providing legal advice. 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 “In Focus” on the section “Library” of our website.

© 2012 Boga & Associates. All rights reserved.

Boga & Associates

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) or consult them in our website (www.bogalaw.com). To unsubscribe from future publications of “In Focus”, please send “Unsubscribe” by replying to our email accompanying this edition.

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. Boga & Associates also operates in Kosovo (Pristina) offering full range of services. Until 1st of May 2007, the firm was a member firm of KPMG International and the Senior Partner/Managing Partner, Mr. Genc Boga was also Managing Partner of KPMG Albania.

The firm maintains its commitment to quality through the skills and determination of a team of attorneys and other professionals with a wide range of skills and experience. The extensive foreign language capabilities of the team help to ensure that its international clientele have easy access to the expanding Albanian and Kosovo business environment.

With its diverse capabilities and experience, the firm acts for leading businesses in most major industries, including banks and financial institutions, as well as companies working 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 sectors.