Corporate Tax

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Albania

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Types of corporate tax work

Albania was awarded candidate status by the EU in June 2014 and is now in the process of implementing reforms with a view to membership, under the assistance of the EU as part of the Instrument for Pre-accession Assistance (IPA II) for the period 2014–2020.

In this context, Albania has undertaken and already partially implemented significant tax changes in the last few years, by replacing existing laws and introducing new ones aligned to EU legislation and best practice.

A new Law on VAT became effective as of 1 January 2015, which has been significantly harmonised with the corresponding EU Directive 2006/112/EC and has brought significant changes to the main VAT principles and rules in Albania. Full adoption of the EU Directive is expected to occur with Albania's membership of the EU.

A new Customs Code has been conceived and structured in line with the Union Customs Code (UCC), which was adopted as Regulation (EU) no. 952/2013 of the European Parliament and of the Council. This new Customs Code, published in 2014, gradually replaced the previous one until its complete replacement in 1 June 2017.

With the assistance of the International Finance Corporation, an elaborated transfer pricing regulation has been drafted in accordance with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration (2010), and was published in 2014 by introducing transfer pricing documentation and reporting requirements for 2014 and onwards. The transfer pricing regulation was subsequently extended in 2015 with a detailed instruction on Advance Pricing Agreements.

A new Law on Accounting and Financial Statements, partially aligned with the EU Directive 2013/34/BE, will enter into force on 1 January 2019 by abrogating the current one (please see below).

A new draft Law on Income Tax (covering corporate income tax, personal income tax and withholding tax) has been drafted by making reference to EU countries' legislation and best practice and was circulated for comment amongst groups of interest in 2015 (please see below). However, it has not yet been finalised and published. It is now expected that it will return to the Ministry of Finance's focus and will most likely enter into force on 1 January 2019.

During the last two to three years, the role of the fiscal administration has been restructured through a new strategy, focusing on simplifying tax procedures and compliance, increasing efficiency in tax collection and improving the overall business climate.

In the context of all the significant changes, the last year showed an increase in requests of our firm for:

- advisory to businesses for the implementation of the relatively new law on VAT, the new Customs Code, and the amended tax procedures;
- advisory on the structuring of international transactions to be in line with transfer pricing regulations;
- tax due diligences;
- assistance during tax audits and tax appeals;
- assistance for businesses aiming to benefit from fiscal amnesty (please see below);
- analysis of legislative gaps and preparation of proposals to the Albanian government for amendments and solutions; and
- analysis and feedback to the Albanian government on draft laws and instructions circulated for consultation with groups of interest.

Significant deals and themes

M&A

The last year has seen the following M&A transactions or announced transactions:

- in February 2018, the American Bank of Investments (ABI) announced that it had reached an Agreement for the acquisition of 100% of the shares of NBG Bank Albania Sh.a; and
- in November 2017, the purchase of the frequencies of Plus Communications Sh.a from Vodafone Albania Sha. and Telekom Albania Sha was announced.

Besides the above, several other similar transactions of a smaller scale have taken place in the last year, involving Albanian companies and subsidiaries of foreign companies.

Without entering into the details of specific transactions regarding the corporate income tax situations of Albanian companies or subsidiaries involved, we would like to present here two hot topics related to M&A: the carry forward of tax losses; and the taxation of capital gains.

Carry forward of tax losses

As a general rule, Albanian taxpayers are entitled to carry forward tax losses resulting in a certain year and utilise them against taxable profits of the three subsequent years based on the rule "earlier losses utilised first". In case that during a year, there is a change in direct and/or indirect ownership of subscribed capital or voting rights by more than 50% in number or value, the tax losses of that particular year and of previous years expire. This restriction is based on the view that tax losses are exclusively related to the taxpayer bearing them, therefore reference is made to the owner of the taxpayer.

The application of this restriction becomes particularly controversial for the following two categories of M&A transactions:

- A change of ownership in the shareholder structure of an ultimate parent publicly listed on a stock exchange market outside of Albania, resulting in an indirect change of ownership of more than 50% for the Albanian affiliate/branch. The Albanian legislation on corporate income tax is silent on whether and how the free trade of shares of the ultimate parent dispersed among the general public (which are not necessarily reported) should affect the carry forward of tax losses of the Albanian affiliate.
- A merger or takeover between Albanian affiliates with the same owner(s), whereby the newly established or absorbing entity has the same owner(s) as before the transaction.

In principle, all rights and obligations are transferred to the new entity/absorbing entity. The Albanian legislation on corporate income tax is silent on whether and how the tax losses of the merged or absorbed affiliates can be transferred to the newly established or the absorbing entity (by respecting the three-year and utilisation limitations) in circumstances where, in fact, there is no change in effective ownership.

Taxation of capital gains

The Albanian legislation on corporate income tax is silent as regards the taxation in Albania of capital gains deriving from the sale of shares in Albanian entities.

When a double tax treaty is in place between Albania and the country of residence of the shareholder (please see below), the provisions of the treaty will prevail over the Albanian legislation. As such, if the treaty provides for the exemption of such gains from tax in Albania, this provision will prevail. However, double tax treaties are not automatically applied in Albania. The General Tax Directorate (GTD) has the sole authority to approve the application of treaty provisions for all specific circumstances of taxpayers after the latter follow certain application procedures to benefit from exemptions, reduced rates and credits. In this case, it is unclear whether the obligation to follow said procedures for obtaining approval of exemption from capital gains tax in Albania lies with the non-resident shareholder, or such exemption applies automatically. In practice, in a few cases, Albanian tax authorities have charged the Albanian entities whose shares were traded with withholding tax liabilities on behalf of the non-resident shareholders.

The situation is even more unclear for capital gains of shareholders resident in countries with which there is no double tax treaty in place.

Transfer pricing

The transfer pricing regulation introduced in 2014 requires an Albanian taxpayer engaged in controlled transactions with non-resident associated parties to ensure consistency of the controlled transactions with the 'market principle'. 'Associated parties' means entities that have a direct or indirect participation in the management, control or capital of one another or by the same third party. To determine the consistency of controlled transactions with the market principle, the regulation recommends the nine-step process of comparability analysis given by the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration (2010) and the application of the five approved transfer pricing methods (other methods may be applied where none of these five can reasonably be applied).

A significant number of medium and large taxpayer members of multinational groups have taken the necessary measures to prepare the transfer pricing documentation up-front. According to the regulation, taxpayers are required to make such documentation available to the tax administration within 30 days following a request. The preparation and submission of the documentation on time (within 30 days after the request) does not prevent the tax administration from making a transfer pricing adjustment (if necessary), but avoids the application of penalties on the additional corporate income tax liabilities assessed (only interest for late payment applied). A large number of taxpayers have been requested by the tax administration in the last one to two years to submit transfer pricing documentation within such 30-day period. However, only a few of them have already been subjected to transfer pricing audits conducted by a specialised transfer pricing audit unit of the tax administration.

An amendment to the Law on Tax Procedures has specified that the transfer pricing audit is separate and independent of a general tax audit and, as such, may be undertaken in a

tax period already submitted to a general tax audit and therefore already assessed once for corporate income tax purposes. Further, it is yet to be tested in practice how any transfer pricing adjustments made by a transfer pricing audit will affect the concerned transactions for other tax purposes, e.g. VAT, customs duties, withholding taxes, etc.

Advance pricing agreement

Starting from March 2015, any taxpayer whose cross-border controlled transactions in a period of five years are expected to exceed in total the value of €30m, is entitled to apply for an advance pricing agreement (APA). In case the threshold is not expected to be met, the request may still be accepted if the case is sufficiently complex or it is highly important in commercial and economic terms for Albania. If there are double tax treaties in place with the countries of the other associated parties, applications should be bilateral or multilateral APAs. Unilateral filings for APAs will be taken into consideration by the GTD only on special occasions (e.g. when the foreign tax administration does not agree to enter into negotiations). The administrative fees payable by the taxpayer comprise ALL 50,000 (approximately €360) upon filing of the application and ALL 1.2m (approximately €8,500) for bilateral and multilateral or ALL 300,000 (approximately €2,000) for unilateral APAs.

The maximum time period covered by an APA is five years. The tax authorities may audit a taxpayer that has entered into an APA as part of their regular tax audits; however, for transactions covered by the APA, the purpose of the audit shall be limited to compliance with the provisions of the APA (which has determined in advance the transfer pricing methodology).

To the best of our knowledge, there has not yet been any APAs concluded in Albania and there is only one multinational APA in the negotiation stage.

Permanent establishment

Under the current Law on Income Tax (in force since 1998), permanent establishment (PE) is defined as a fixed location of business where an entity carries out its business activity. Specifically, the following are considered PEs: an administration office; a branch; a factory; a workshop; a mine, an oil or gas well or a quarry; any other place of extraction of natural resources; and a construction or installation site. The said law provides for no minimum time period for any of the above to be considered a PE. If there is a double tax treaty in place, the related provisions for the determination of a PE, including any time limitations, will prevail.

We have noted some controversy between interpretations of Albanian tax advisors on the consequences of creating a PE in Albania as a result of managerial, professional, consultancy and other types of services provided herein.

One interpretation is that the non-resident person has the obligation to register the PE with the Albanian tax authorities in the form of a branch (there is no option to formally register a PE as such). The registered branch would pay tax on income attributable to it in the form of corporate income tax, by deducting costs (including those recharged by the Head Office). However, the registered branch would also trigger all other applicable taxes, e.g. VAT, social and health contributions and employment income tax (for employees), local taxes, etc., as well as other compliance obligations, e.g. preparation and audit of statutory financial statements.

Another interpretation is that the non-resident person has no obligation to register the

PE in the form of a branch, as long as the Albanian beneficiary of the services retains 15% withholding tax from the gross payment made to the non-resident and remits it to the Albanian tax administration. The PE in this case would not be allowed to deduct any costs in determining the amount subject to Albanian income tax. On the other hand, the PE would not typically be subject to other taxes and compliance obligations. Under this latter interpretation, the decision of whether to register the PE in Albania in the form of a branch remains at the discretion of the non-resident person and should not necessarily be driven by tax reasons.

Withholding tax on services

We have noted an increasing controversy between taxpayers and tax advisors on one hand, and Albanian tax authorities on the other, as regards the application of withholding tax on managerial, professional, consultancy and other types of services provided with no physical presence of personnel/equipment in Albania when no double tax treaty is in place.

The general understanding of taxpayers and tax advisors is that such services should not be taxable in Albania (and therefore the Albanian beneficiary should not be charged with withholding tax liabilities) because they are provided without physical presence of the foreign personnel and equipment in Albania and therefore do not create a PE in Albania according to the definition provided by law.

The interpretation of the Albanian tax administration has not been consistent on this matter throughout the past few years. However, the final position taken by the tax administration and recently published in the form of a technical decision is that such services should be subject to withholding tax in Albania, to be retained by the Albanian beneficiary, as long as the source of payment for such services is in Albania, regardless of where they are carried out. As such, the Albanian tax authorities are indicating that in their interpretation, the 'source of service income' is equal to the 'source of payment for such income'.

Thin capitalisation rule

There are two thin capitalisation rules in Albania, one applicable since 1998 and a new one introduced recently and applicable as of 1 January 2018. The first rule determines that interest expenses pertaining to the part of loans exceeding four times the net equity are not deductible for corporate income tax purposes. Unlike in many other countries where a similar rule applies to loans by shareholders having more than a certain percentage of shares (e.g. 25%), in Albania such rule applies to all loans, except for short-term loans (payable within less than one year). This rule does not apply to banks, finance leases or insurance companies. There is particular controversy in the application of this rule on branches of foreign companies, which by default have no subscribed capital and therefore have no way of increasing net equity except for retained profits.

Based on the second rule, effective as from 1 January 2018, in the case of loans from related parties, the excess of net interest over 30% of earnings before interest, taxes, depreciation and amortisation (EBITDA) will be considered as a non-deductible expense. Such excess net interest will be carried forward and deducted in subsequent years, until a transfer of more than 50% of the company's shares or voting rights occurs. This thin capitalisation rule will not apply to banks, insurance companies, non-bank credit financial institutions and financial leasing companies. There is no instruction yet on how the carry forward and future deduction of the excess net interest will be reflected in the current limited format of the corporate income tax declaration.

Key developments affecting corporate tax law and practice

Domestic – cases and legislation

Administrative tax appeal and court procedures

Some important amendments have been introduced during the last one to two years to the tax appeal procedures and structures.

- Voluntary pre-declaration and pre-payment of tax liabilities
  As of 30 November 2016, taxpayers are offered a 'self-declaration form', sent as an attachment to the tax audit programme notification, for the voluntary pre-declaration and pre-payment of tax liabilities for any non-declared transactions. The pre-declaration of such tax liabilities and the prepayment of them and any related interest should take place during the 30-calendar-day period between the tax audit programme notification and the tax audit commencement. The tax liabilities concerned will be subject to the respective administrative penalties as provided by the Law, to be imposed through the tax audit assessment. However, in case the taxpayer has opted to pre-declare and pre-pay the tax liabilities as described above, such penalties will be capped to 50% (in case they are higher).
- Appeal structures
  As of 1 January 2017, the Tax Appeal Directorate has been transferred under the organigram of the Ministry of Finance (it previously was under the General Tax Directorate) and has been designated to make decisions on tax administrative appeals concerning 'values subject to appeal' under ALL 20,000,000. As of the same date, a new parallel structure has been established under the Ministry of Finance and has been designated to analyse and take decisions on tax administrative appeals involving 'values subject to appeal' over ALL 20,000,000 – 'the Commission for Assessment of Tax Appeals'.
  'Values subject to appeal' include tax liabilities re-assessed, tax credits reduced, tax losses reduced as well as tax reimbursement requests rejected – that are subject to appeal.
  The tax appeal procedures will be equally applicable for both the Tax Appeal Directorate and the Commission for Assessment of Tax Appeals, including the obligation of the concerned taxpayer to pay or create a bank guarantee for the amount of tax liabilities appealed (excluding penalties). These new structures came into force on May 2017.
  A taxpayer may file an appeal against any action or omission of the tax authorities which affect its tax obligations.
- Court procedures
  Against decisions of the Tax Appeal Directorate/Commission for Assessment of Tax Appeals, taxpayers may file a lawsuit with an Albanian administrative court.
  As regards court procedures, pursuant to the law 'On administrative courts and examination of administrative disputes', the public authorities have the burden of proof in relation to the legality of administrative acts issued without the request of the private party.

New law on accounting and financial statements

A new law on accounting and financial statements, partially aligned with the EU Directive 2013/34/EU, will enter into force on 1 January 2019 by abrogating the current law on accounting and financial statements, which has been in force since in 2006. The new law introduces new concepts such as 'a public interest entity', 'financial 'holding' entity', 'group of entities', 'participating interest', 'functional and presentation currency' and

'person responsible for the preparation of financial statements'. It classifies entities into micro-entities, small and medium-sized entities (SMEs), and large entities, based on criteria such as total assets, turnover and number of employees. Similar criteria are also used to classify groups of entities into small, medium and large groups. According to the new law, the International Accounting Standards and International Financial Reporting Standards (IAS/IFRS) should be applied only by public interest entities as well as credit and insurance regulatory bodies. All other entities should apply National Accounting Standards (aligned with IFRS for SMEs), as prepared and published by the National Accounting Council, although they may opt to apply IAS/IFRS instead. 'Public interest entities' include companies listed on stock exchange markets, banks and non-bank financial institutions, insurance and reinsurance companies, investment and voluntary pension funds, and also other companies that will be considered with public interest because of the nature of their business, their size and the number of their employees. Based on the current law, IAS/IFRS are applied not only by companies registered in a stock exchange but also by their affiliates, subject to consolidation of accounts. The new law brings a significant change for these affiliates. It also introduces additional requirements on information to include in the notes to the financial statements, as well as additional reporting requirements such as the 'management report', including non-financial information.

Law providing amnesty for certain tax liabilities

A law on fiscal amnesty applicable from 6 May 2017 to 31 December 2017 provided that certain unpaid tax liabilities and customs duties, as well as certain penalties and interest, could be cancelled if certain conditions were fulfilled. The relief depended on the type of liability and the period to which it related and it was applicable to legal entities and individuals for both national and local taxes (with certain exceptions).

There were two main conditions to meet in order to benefit from the law:

- the taxpayer should withdraw from any ongoing administrative appeal or court proceedings related to the concerned tax liabilities, penalties and interest; and
- the VAT credit balance available to the taxpayer, if any, would be automatically used to offset its unpaid tax liabilities (except for social and health contribution liabilities), the related penalties and interest, in order for any remaining portion of the tax liabilities not offset, to be cancelled based on the law.

According to the information made available by the GTD, around 120,000 individual and business taxpayers fulfilling the criteria benefited from the law, either through automatic cancellation of their tax liabilities, penalties and interest by the tax administration or by following certain procedures with the tax administration.

'Tax certification' of tax declarations

Based on a recent amendment to the Law on Tax Procedures, taxpayers have the possibility to engage certain authorised audit companies (amongst which is Deloitte) to certify their 'tax declarations' as 'in compliance with the fiscal legislation'. The benefit of this certification, however, has been limited to improving the taxpayer's position in the risk assessment performed by the tax administration when selecting taxpayers for tax audit (where the 'tax certification' will be an additional indicator to consider, amongst other existing indicators). There is still no legal guarantee that certified tax declarations will be considered to be in compliance with the tax legislation by the tax auditors. In fact, in case a tax audit reassesses the tax liabilities of a taxpayer related to a period 'certified by an audit company as in compliance with the tax legislation':

- the taxpayer will be subject to the full amount of the additional tax liabilities (and related interest and penalties); whereas

- the authorised audit company will be subject to a penalty amounting to 50% of the reassessed tax liabilities, in addition to the penalties already applicable to the concerned taxpayer.

There has, as yet, been no guidance issued in relation to the methods of conducting and reporting a tax certification by authorised audit companies, nor any such process undertaken by any taxpayer/authorised audit company. In our view, in the way it is currently provided by law, the tax certification is hardly applicable since the benefit of a taxpayer in having certified tax declarations is way too low compared to the risk incurred by authorised audit companies.

Re-evaluation of immovable property and new basis of calculation of local tax on buildings

By means of a law introduced on 20 August 2016, individuals and legal entities were granted the possibility to re-evaluate their immovable properties at market value by submitting a request before 31 May 2017 and paying a tax on the revaluation of 2% of the taxable base for individuals and 3% for legal entities. This revaluation option was available in anticipation of an expected significant change in the local tax on immovable property. The Fiscal Package of 2018 brought amendments to the taxable base and tax rate for the tax on buildings, with effect from 1 April 2018. The taxable base for the tax on buildings will be the market value of the building (previously, the taxable base was the surface area, adjusted based on the location, age and purpose of the building). The tax rates will be as follows: (i) 0.05% for buildings used for habitation; (ii) 0.2% for buildings used for business purposes; and (iii) 30% of the relevant tax rate for an entire construction site for which a builder obtained a construction permit but failed to complete the construction according to the deadline in the permit. A central registry, known as the fiscal cadastre, will be set up for the authorities to administer the tax on immovable property. The registry will be managed by the General Directorate of Property Tax, an institution under the responsibility of the Ministry of Finance. This is a particularly sensitive and highly debated tax change in Albania, so we would expect some controversy during its first years of application in 2018 and 2019.

Inspired by international developments

Double tax treaties

Albania has entered into double tax treaties with 41 countries, of which 39 are effective (Austria, Belgium, Bosnia & Herzegovina, Bulgaria, China, Croatia, the Czech Republic, Egypt, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Kosovo, Kuwait, Latvia, Macedonia, Malaysia, Malta, Moldova, the Netherlands, Norway, Poland, Qatar, Romania, Russia, Serbia & Montenegro, Singapore, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, the United Arab Emirates and the United Kingdom) and two are not yet effective (India and Luxembourg). They are principally based on the OECD Model Convention and they have certain differing provisions compared to each other based on the year in which they were respectively signed.

Provisions of a tax treaty prevail only when an application is filed by the Albanian taxpayer requesting a benefit under such treaty, i.e. exemption from withholding tax or obtaining an authorisation to apply a reduced rate. In practice, taxpayers are facing an increasing number of cases where the implementation of the provisions of the tax treaty remain on hold until the exchange of information procedures between the tax authorities of both contracting states are concluded.

Anti-avoidance measures

Albanian tax legislation provides to local tax authorities the right to re-characterise or disregard transactions in case of a lack of substantial economic reasons and effects. With the introduction of the detailed transfer pricing regulation in 2014, this provision of the income tax legislation was improved. In this context, there is now increased scrutiny over transactions involving 'tax havens'. Transactions between an Albanian resident person or a non-resident person having a PE in Albania and a person resident in a jurisdiction out of the 65 listed in the transfer pricing regulation, are deemed 'controlled transactions' and are subject to transfer pricing requirements, regardless of the relationship between the parties. This list of 65 jurisdictions includes the British Virgin Islands, Guernsey, Hong Kong, Jersey, Liechtenstein, the Marshall Islands, Monaco, Panama, the Philippines, San Marino, the U.S. Virgin Islands, etc.

Exchange of tax information

Albania has adhered to the Convention on Mutual Administrative Assistance in Tax Matters since 2013. Pursuant to this Convention, the Albanian tax administration has the right to receive information not only from banks and non-bank financial institutions but also from each individual who possesses the information concerned.

In March 2016, Albania approved the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and assigned the Ministry of Finance and the General Tax Directorate as the appointed competent authority for Albania. The intended first information exchange for Albania is in September 2018.

FATCA

Twenty-three Albanian financial institutions (mostly second-level banks and subsidiaries of foreign financial institutions) are currently listed as with approved FATCA registration.[1] These financial institutions have therefore committed to reporting about financial accounts held by U.S. taxpayers or foreign entities in which U.S. taxpayers hold a substantial ownership interest.

BEPS

Although Albania is not a member or a candidate country of the OECD, representatives of the Ministry of Finance have directly participated in the BEPS meetings. However, Albania has not yet introduced any legislation in response to the OECD's project and there are no publicly expressed intentions to adopt any legislation against BEPS, either within or beyond the OECD's recommendations, nor to become a signatory of the Multilateral Instrument.

Tax climate in Albania

Based on the most recent World Bank report on Doing Business,[2] Albania stands at 65 in the ranking of 190 economies on the ease of paying taxes. One of the main positive factors in this ranking is the increased ease of paying taxes. Albania launched an upgraded online platform for filing corporate income tax, VAT and social insurance contributions as of 1 January 2015. Consolidated online return for mandatory contributions and payroll taxes was integrated within the online system. Soon, all taxpayers (individuals and/or legal entities) will be able to submit electronically through the state portal e-Albania requests to obtain tax certificates and download them free of charge. Albania has also significantly reduced the time spent in customs by adopting a digital risk-based border inspection process and by implementing an electronic facility, based on ASYCUDA modules for risk management.

The tax climate over the last few years has been reflective of the Albanian government's measures against fiscal informality, initiatives to increase efficiency in tax collection and

simplify procedures of tax reimbursement, implementation of a new e-tax filing system for the declaration and payment of taxes as well as for electronic communication between taxpayers and the tax administration.

Developments affecting attractiveness of Albania for holding companies

Albania generally does not provide for specific tax incentives or attractions for holding companies.

The following may, however, be of interest for holding companies established in Albania:

- For inbound dividends distributed to an Albanian holding company by its subsidiaries:
  - In case of domestic subsidiaries, dividend income is exempt from corporate income tax.
  - In case of foreign subsidiaries, dividend income is subject to corporate income tax but credit of foreign tax paid is available (up to 15%) if there is a double tax treaty in place with the country of the foreign subsidiary. In this regard, a certain administrative inconvenience is caused by the current format of the corporate income tax return, which does not provide for such credit option.
- For outbound dividends distributed by an Albanian holding company to its shareholders:
  - In case of resident shareholder entities subject to Albanian corporate income tax, no withholding tax liability is applicable.
  - In case of resident shareholder individuals, withholding tax of 15% is applicable.
  - For foreign shareholders, withholding tax of 15% is applicable. However, if such shareholders are resident in countries with a double tax treaty in place, the withholding tax rate may be reduced or even zero-rated depending on the respective treaty provisions.
- Please see above in relation to possible income tax on the future sale of shares of an Albanian holding company by its shareholders.

Industry sector focus

Tourism

In the last few years, tourism has been one of the focuses of the Albanian government. In the context of supporting and promoting investments in tourism, the government took several legal initiatives, with the purpose of creating and providing fiscal facilities to the hotel sector.

Starting from 1 January 2018, four- and five-star hotels with "special status" are exempt from corporate income tax for a 10-year period starting from the date business activities commence, but no later than three years from the date the hotel obtains special status.

The classification of hotels (awarding of stars) is performed by the Standardization Commission of the Tourism Activity, a structure under the responsibility of the Ministry for Tourism.

In order to qualify for special status, the hotel must meet certain criteria provided by the law and the Council of Ministers and is granted by a commission under the responsibility of the Ministry for Tourism. This special status should be obtained by 31 December 2024. Moreover, starting from 1 January 2018, all supplies of services at five-star hotels/resorts that have special status are subject to a reduced VAT rate of 6% (until 31 December 2017, only the supply of accommodations was subject to such reduced rate). Accommodation

facilities in four- and five-star hotels with special status are also exempt from the local tax on buildings as well as from the infrastructure tax (a tax imposed on new construction) as from 1 January 2018.

Apart from the above, the law on tourism provides the possibility of the Council of Ministers to grant to investors which invest in tourism priority zones the right to use state-owned real estate for a period of 99 years based on a symbolic contract of €1.

Oil and gas

Albania is rich in petroleum resources both on- and offshore. Hydrocarbons contractors who have entered into Production Sharing Agreements with the Albanian government are subject to a special corporate income tax regime. They are taxed at 50% of the taxable profit calculated after recovery of all hydrocarbons recoverable costs (capital and operational), as provided by the respective Agreements. Services from subcontractors and imports of materials at the exploration phase may benefit from a VAT exemption if approved by the National Agency of Natural Resources by relieving hydrocarbons operators from an excessive cash burden at the exploration phase.

In February 2017, the Albanian parliament approved law no. 6/2017 amending law no. 7746, dated 28 July 1993 "On Hydrocarbons". These amendments aim to improve the provisions of law no. 7746 by reflecting the concepts laid down by Directive 94/22/EC of the European Parliament and the European Council, dated 30 May 1994 "On the Conditions for Granting and Using Authorisations for the Prospection, Exploration and Production of Hydrocarbons".

Energy

On 2 February 2017, the Albanian Parliament approved law no. 7/2017, dated 2 February 2017 "On Promotion and Use of Energy from Renewable Sources". The aim of such law is to incentivise the production of energy from renewable sources by partially adopting Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources.

Strategic investors and operators of economic development zones

In May 2015, the Albanian Parliament passed law no. 55/2015 "On Strategic Investments in the Republic of Albania". This legal instrument aims for the encouragement and attraction of domestic and foreign strategic investments in the economic sector through the establishment of specific favourable administrative procedures that facilitate and accelerate services for and support to investors.

Some noteworthy tax incentives and reliefs were introduced in September 2015 for operators and developers of technology and economic development zones such as the special VAT treatment of goods entering economic zones, exemption from corporate income tax for a certain time period, deductibility of various expenses for the purposes of corporate income tax, etc.

The year ahead

Apart from the measures to combat fiscal informality and those to increase the efficiency of the tax administration, a major change expected to occur in the next one to two years is related to the new Law on Income Tax.

Based on the draft law circulated for comment amongst groups of interest back in 2015, the following major changes to corporate income tax may be expected, amongst others:

- New rules for PE determination, including a time limitation.
- New rules for exemption of dividend income from corporate income tax related to a minimum shareholding and for a minimum period of time.
- A new thin capitalisation rule limiting the net interest expenses to a percentage of taxable earnings before profit and tax.
- Special rules for the valuation of the shares received in connection with an incorporation or a transfer of a branch/branches of activity.
- Special tax avoidance rules allowing the tax administration to disregard transactions lacking economic substance put in place for the main purpose of obtaining a tax benefit.
- Recognition of revenue on long-term contracts based on the percentage of completion.
- Taxation of capital gains on the transfer of business assets and liabilities.
- Changes in the depreciation methods allowed for tax purposes and introduction of the concept book value 'for tax purposes'.
- Extension of the period for utilisation of tax losses.
- Subjecting certain payments to withholding tax despite them being paid to resident taxpayers.

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Endnotes

1. https://apps.irs.gov/app/fatcaFfiList/flu.jsf.
2. http://www.doingbusiness.org/data/exploreeconomies/albania.

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Her experience includes tax advisory services, tax due diligence, tax litigation, tax structuring as well as financial reporting under IAS/IFRS and Albanian National Accounting Standards for a wide range of clients and industries, mostly focusing on energy and utilities, telecommunication, consumer business, construction, insurance and banking, and technology.

Xheni has been a lector of national and international taxation in a professional Master's program of collaboration between the University of Turin (Italy), University of Tirana (Albania) and Deloitte, as well as a trainer in Deloitte training programmes for staff and clients.

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