

Albania Tax & Legal Alert

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As announced in our Tax & Legal News of May 2015 and re-brought to your attention in our Tax News of December 2015, the financial effects of the previous Double Tax Treaty between Albania and Kosovo were extended up to 31.12.2015. The new Double Tax Treaty applies for tax periods beginning on or after 01.01.2016.

We have shortly summarized below the main changes between the new Double Tax Treaty ("new DTT") and the previous one ("former DTT").

Permanent establishment ("PE")

Based on the new DTT, a building site, a construction or an installation project will constitute a PE if it lasts in the other country for more than 6 months. *The former DTT provided for a threshold of 9 months.*

The new DTT introduces a PE threshold for all services (including consultancy services), other than those mentioned above. They will constitute a PE if they are rendered in the other country directly through employees or other personnel engaged for such purpose and if they continue for periods aggregating more than 3 months within a 12-months period. *The former DTT had no provision related to services other than those connected with a building site, construction or installation project mentioned above.*

The new provision and the revised thresholds brought by the new DTT are similar to the PE rules determined by Kosovo Law on Corporate Income Tax No. 05/L-029.

Business profits

In determining the taxable profits of a PE, the former DTT expressly allowed the deduction of expenses incurred for the purpose of the PE, whether in the country in which the PE was situated or elsewhere, including executive and general administrative expenses (overheads).



The new DTT does not contain the same explicit provision.

Dividends

The former DTT provided that dividends paid by a person resident in one country (source country) to a shareholder resident in the other country (residence country), could be taxable in the source country up to 10% of the gross amount of the dividends. The new DTT does not give to the source country any similar taxation right. It provides that dividends may be taxable directly in the residence country. (Our note: The wording “shall be taxable in the residence country” is generally used when giving exclusive right of taxation to the country of residence. In this case, the wording “may be taxable in the residence country” has been used instead.)

Royalties

The former DTT provided that royalties paid by a person resident in one country (source country) to a person resident in the other country (residence country), could be taxable in the source country up to 10% of the gross amount of the royalties. The new DTT does not give to the source country any similar taxation right. It provides that royalties may be taxable in the residence country, but in such case, tax charged should not be more than 10%. (Our note: The limitation of the tax rate imposed on the residence country is unusual and unclear.)

Independent personal services

The former DTT included an article indicating in which country should be taxed income from professional services or other activities of an independent character conducted by a resident of one country through physical presence in the other country. This article has been deleted in the new DTT. The performance of professional services and of other activities of an independent character has been included instead in the definition of ‘business’ of the new DTT and is therefore subject to the provisions related to PEs and business profits.

Students, lecturers and scientific researchers

The former DTT provided certain rules of taxation on payments or remuneration received from temporary employment by students or apprentices studying in the other

country, as well as payments or remuneration received by lecturers or scientific researchers working in the other country in such capacity. The new DTT does not contain any specific provisions on this regard.

Mutual agreement procedure

Similar to the former DTT, the new DTT also provides for the right of a taxpayer to present objections to the competent authorities where this taxpayer considers that the actions of one or both of the competent authorities result in taxation not in accordance with the provisions of the DTT. Unlike the former DTT, the new one provides for the right of the taxpayer to submit the case to arbitration in case the competent authorities are not able to reach a mutual agreement to resolve it within 2 years. The arbitration decision will then be mandatory for both countries.

Assistance in collection of taxes

This is a new article introduced by the new DTT. It provides the rules based on which Albania and Kosovo will lend assistance to each other in the collection of taxes, administrative penalties and interest.

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