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 one to three 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.

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, has been gradually replacing the existing one until its complete replacement by 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 has been 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 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 during 2015 (please see below). It was first expected to become final and enter into force by 1 January 2017, but in fact has not been finalised yet and there has been no new expected date announced.

During the last one to two 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.

A new law that applies as from 6 May 2017 until 31 December 2017 provides that certain unpaid tax liabilities and customs duties, as well as certain penalties and interest, may be cancelled if certain conditions are fulfilled (see below).

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

- advisory to businesses for the implementation of the relatively new law on VAT and the amended tax procedures;
- advisory on the structuring of international transactions in line with transfer pricing regulations;
- tax due diligences;
- assistance during tax audits and tax appeals;
- assessment of the possibility for businesses to benefit from fiscal amnesty;
- 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 one to two years have seen the following major M&A transactions or announced transactions:

- As announced in March 2016, affiliates of Geo-Jade Petroleum Corporation, one of the largest independent oil and gas exploration and production companies in China, acquired in September 2016 all the issued and outstanding common shares of Bankers Petroleum Ltd. Subsequently, Bankers Petroleum's shares were delisted from both the Toronto Stock Exchange and the AIM Exchange.
- In March 2016, Shell Upstream Albania B.V., a wholly owned subsidiary of Royal Dutch Shell plc, acquired substantially all of the assets of Petromanas Albania GmbH, Petromanas' wholly owned subsidiary, and took over Operatorship of the Productions Sharing Agreement on Blocks 2–3.
- In May 2016, Novamatic Gaming Industries GmbH acquired 100% of the shares of Albanisch Österreichische Holding Gesellschaft m.b.H and consequently acquired control of Llotaria Shqiptare Shpk.
- In October 2016, Tirana International Airport (TIA) announced that China Everbright Limited, an international investment and asset management company based in Hong Kong, had acquired 100% of the shares in TIA.

Besides the above, several other similar transactions of a smaller scale have taken place in the last two years, involving Albanian companies, subsidiaries of foreign companies, their branches, etc.

Without entering into the details of specific transactions on corporate income tax situations of Albanian companies, subsidiaries or branches 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 in 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 of 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 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).

Thanks to the initiative of the big four consultancy firms to increase awareness on transfer pricing regulation and risks, a significant number of medium and large taxpayer members of multinational groups took the necessary measures to prepare the transfer pricing documentation for the years 2014, 2015 and 2016 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).

Furthermore, taxpayers engaging in controlled transactions exceeding in aggregate ALL 50m within a year (approximately €357,000), are required to complete and submit by the 31 March of the following year an 'Annual Controlled Transactions Notice'. The first submissions of this kind were made by 31 March 2015.

Immediately after, the tax administration commenced sending requests for submission of transfer pricing documentation and conducted a number of first transfer pricing audits assisted by external consultants from the Italian tax administration. Since then, less or no transfer pricing audits have been initiated by the tax administration. A recent 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 on 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. One of the positions that is often taken 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.

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. Based on the general current rule, 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 additional 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 year 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).
- New 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).
  Although the restructuring/establishment of these structures was expected to occur as of 1 January 2017, they have in fact not been functioning for several months.
  On 13 April 2017, the Ministry of Finance issued an instruction providing that for tax appeals presented from 1 January 2017 until the entry into force of such Instruction (i.e. until 21 April 2017), the 'date of receipt of the appeals' from the Tax Appeal Directorate/Commission will be "*the date on which the Tax Appeal Directorate has*

initiated the exercise of its functions under the Ministry of Finance according to the legislation in force and the appeal has been handed-over to the Tax Appeal Director". The Tax Appeal Directorate/Commission initiated its activity and held its first tax appeal hearings in early June.

- Burden of proof
  Based on an amendment of 30 November 2016, the burden of proof to verify that a tax assessment notice is not correct will be determined based on the provisions of the Administrative Procedures Code. Previously, the burden of proof was determined as lying solely with the concerned taxpayer.
  Pursuant to the Code of Administrative Procedures of the Republic of Albania in relation to the administrative procedures initiated upon request of the private parties, the burden of proof lies with the private party. As regards court procedures pursuant to the law "On administrative courts and examination of administrative disputes", the public authority has the burden of proof in relation to the legality of administrative acts issued without the request of the private party. This creates some uncertainties in case of a tax appeal petition considering that such petition is filed and the procedure initiated upon request of the private party, but mainly following a tax assessment notice initiated and issued *ex officio* from tax authorities.
- Right of appeal by the Regional Tax Directorates
  Based on an amendment of 30 November 2016, the decisions of the Tax Appeal Directorate and the Commission for Assessment of Tax Appeals will be binding for the Regional Tax Directorate that issued the tax assessment, subject to appeal. The latter will no longer have the right to initiate court procedures against such decisions. Previously, in case the administrative appeal of the taxpayer was successful, the Regional Tax Directorate that issued the assessment had the right, as did the taxpayer, to appeal in court the decision of the Tax Appeal Directorate. Taking into account that, in practice, tax directorates filed a court petition against almost all decisions in favour of taxpayers, the latter faced the awkward situation where they were forced to undergo court proceedings despite the positive decision of the Tax Appeal Directorate. However, court procedures initiated prior to the entry into force of this amendment will continue their examination near the respective administrative courts.

New law providing amnesty for certain tax liabilities

A law approved on 30 March 2017 and that applies as from 6 May 2017 provides that certain unpaid tax liabilities and customs duties, as well as certain penalties and interest, may be cancelled if certain conditions are fulfilled. The relief depends on the type of liability and the period to which it relates. The amnesty is available to legal entities and individuals for the period from 6 May 2017 through 31 December 2017, and applies to both national and local taxes (with certain exceptions).

There are two main conditions to benefit from the new law:

- the taxpayer must withdraw from any ongoing administrative appeal or court proceedings related to the tax liabilities, penalties and interest that it wishes to have cancelled; and
- the VAT credit balance available to the taxpayer, if any, must be automatically used to offset its unpaid tax liabilities (except for social and health contribution liabilities), for the related penalties and interest, as well as any portion of the tax liabilities not offset, to be cancelled based on the law.

Tax liabilities, penalties and interest previously assessed by the tax administration that may be cancelled based on the new law may be divided into the categories described below:

- tax liabilities, penalties and interest that relate to tax periods ending no later than 31 December 2010;
- interest and penalties related to periods from 2011 to 2014, provided the taxpayer settled the principal part of the tax liability before 6 May 2017, or it will be paid in full by 31 December 2017; and
- certain other tax penalties which may be cancelled regardless of the tax period to which they relate (e.g. penalties for the failure to submit or the delayed submission of tax declarations, penalties for the late submission to the tax administration of the annual financial statements and decisions relating to the use of annual profits, etc.).

'Tax certification' of tax declarations

Taxpayers will 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 on the concerned taxpayer.

There is no guidance issued yet in relation to the methods of conducting and reporting a tax certification by authorised audit companies and there is no such process yet 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

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. Individuals and legal entities had the right to request before 31 May 2017 the re-evaluation of land and/or buildings under their ownership, as well as of property under the registration process.

The tax payable on the revaluation of immovable property of individuals was 2% of the taxable base, whereas for legal entities it was 3%.

Draft law on licensed fiscal experts

A draft law on licensed fiscal experts was proposed by a group of members of Parliament and was reviewed and discussed in the Economic and Finance Commission of the Parliament in March 2017. It was not previously consulted with groups of interest and most of them were not aware of it until a few days before the Commission meetings. Groups of interest reacted promptly and firmly by stating their disagreement to:

- the monopoly proposed by the draft law, i.e. restriction of the fiscal advisory services only to individuals and companies obtaining the fiscal expert licence and disallowance of such services by other parties such as auditors, accountants, lawyers, etc.;

- lack of consultation with groups of interest, including current fiscal experts and advisors; and
- lack of any transitional period provided in the draft law.

The draft law has been currently suspended.

Inspired by international developments

Double tax treaties

Albania has entered into double tax treaties with 41 countries, of which 38 are effective (Austria, Belgium, Bosnia & Herzegovina, Bulgaria, China, Croatia, the Czech Republic, Egypt, 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 three are not yet effective (Estonia, 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-four 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.

Tax climate in Albania

Based on the most recent World Bank report on Doing Business,[2] Albania stands at 58 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. 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 in case of a holding company 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

Banking

The provisions for impairment losses on loans have been subject to large disputes between the majority of banks in Albania and the tax administration. Banks apply IAS/IFRS for statutory financial reporting purposes. On the other hand, banks apply a special manual of accounting for regulatory reporting to the Central Bank of Albania (BoA). Up to 2010, the Law on Income Tax recognised as deductible for corporate income tax provisions for impairment losses calculated in accordance with BoA rules. Since 2011 and up to 2013, a change in the Law determined that provisions for impairment losses as assessed in the IAS/IFRS audited statutory financial statements would be deductible, but in any case without exceeding the amounts determined based on BoA rules for the same purpose. This rule was unclear and caused confusion amongst banks and tax authorities. Since 2014, the limitation of deductibility up to BoA's amounts/rules has been removed and the rule is now clear and acceptable by both parties.

As of January 2017, it has been clarified that expenses incurred by banks for annual and extraordinary contributions will be considered deductible in determining the taxable result.

Oil and gas

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, the 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 in August 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.
- 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.

* * *

Endnotes

1. https://apps.irs.gov/app/fatcaFfiList/flu.jsf.
2. http://www.doingbusiness.org/~/media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf.

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Erlind Kodhelaj is a Legal Manager in Deloitte Legal, a subsidiary of Deloitte Albania. He joined Deloitte in 2015 from a leading law firm in Albania. Erlind has more than nine years' experience as a lawyer specialising in commercial/corporate law, legal tax advice, employment law, public procurement, competition, project financing, real estate, concessions, privatisation, and oil and energy. He has participated in several projects conducted in Albania, with involvement in project financing regarding PPP, concessions and privatisations in the field of oil, energy and public infrastructure.

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