

Tax News

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I. Base salary for the purpose of calculation of social and health contributions for freelance professionals

As anticipated by the amendments to Law no. 9136, dated 11.09.2003 “On the collection of mandatory contributions of social security and health insurance in the Republic of Albania” (included in our Special Tax News on the [Fiscal Package 2016](#)), the Council of Ministers has issued a decision for the determination of the base salaries for the calculation of social and health insurance contributions for freelance professionals.

Decision no. 37, dated 21.01.2016 is published in the [Official Journal no. 9/2016](#), dated 29.01.2016, and enters into force on that same date.

Subject of this Decision is the following list of 23 categories of self-employed professionals registered as entrepreneurs:

Pharmacists; IT programmers (software developers/applications programmers); Real estate appraisers; Lawyers; Notaries; Bailiffs; Consultants in the fields of taxes, accounting, insurance etc.; Public Certified Accountants; Architects; Engineers; Designers (in the construction sector); Agronomists; Translators; Tour guides; Veterinarians; Teachers; Trainers in various activities, including arts, culture and sports; General practitioners; Medical doctors; Dentists; Physiotherapists; and Court mediators.

Before the entry into force of the Fiscal Package 2016, for all categories of self-employed, the base salary for the calculation of social and health contributions was as follows: for social contributions – equal to the minimum salary for contributions calculation purposes (ALL 22,000); for health contributions – twice the minimum salary for contributions calculation purposes.

The new base salary for each category is determined by taking into account the nature of the professional activity, the area where the activity is carried out, the number of years active in the respective profession, number of the employees, etc.

The level of base salary (presented in Annex 2 of the Decision), varies from ALL 40,250 up to ALL 73,800 according to the type of activity/profession (categories determined in Annex 1 of the Decisions) and the area where the activity is carried out or the profession is exercised (categories determined in Annex 3 of the Decision).

The level of base salary of ALL 22,000 for non-paid family members has remained unchanged.

In case the self-employed professional employs other individuals (including non-paid family members), the base salary will be increased by 3% for every other full-time employee and by 2% for part-time employees, without exceeding the maximum salary for purposes of social contributions of ALL 97,030.

The base salary of self-employed professionals who carry out an economic professional activity under a license or permit will be reduced by 30% for the first 3 years after the start of their activity and, subsequently, by 15% for the next 3 years, regardless of the number of employees.

II. Law no. 155/2015, dated 21.12.2015 “On Gambling in the Republic of Albania”

The specific law that has regulated the gambling sector in Albania until 03.02.2016 is Law no. 10 033, dated 11.12.2008 “On gambling”, as amended, along with the secondary legislation enacted for its implementation: Decisions of Council of Ministers (in total 17) and Instructions of Minister of Finance (in total 25).

From 04.02.2016, the gambling sector shall be regulated by the new Law no. 155/2015, dated 21.12.2015, “On gambling in the Republic of Albania”, published in the Official Gazette no. 251, dated 20.01.2016. The new Law will abolish the former one.

The secondary legislation issued for the implementation of the former Law will continue to remain in force to the extent that they do not conflict with the provisions of the new Law and until the new secondary legislation (for the implementation of the new Law) is approved. This approval is expected within 3 months from the entry into force of the new Law.

We have shortly summarized below some of the key changes brought by the new Law.

Gambling categories

The new Law has introduced some new gambling categories, namely casinos located in 5 stars hotels, resort casinos and electronic games at distance. Whereas, certain categories regulated by the former Law, such as traditional bingos and electronic casinos, shall be no longer available.

The Central Online Monitoring System

A new Central Online Monitoring System (COMS) will be implemented and will be utilised by the Gambling Supervisory Authority (previously known as Gambling Supervisory Unit) to obtain from all operators, on real time, data related to turnover, profits, participants to the games and any other necessary information.

The Gambling Supervisory Authority will request to operators of all gambling categories to connect their gambling equipment and/or their central systems with COMS and to keep such connection active throughout the entire period of their activity. Operators may also be requested to improve, modify, customize or substitute (as the case may be) their gambling equipment to ensure conformity with the COMS.

New gambling tax system

After the implementation and start of operation of COMS (date to be determined based on an expected decision of the Council of Ministers), tax liabilities and other fees due by gambling operators will be calculated as follows, unless capped or otherwise provided for specific gambling categories (*):

- a) Monthly gambling tax of 15% on the ‘gross gambling revenues’ (determined as the amount left to the operator from the difference between the total amounts played by participants and the amounts earned by them) payable to the respective Regional Tax Directorate within the 15th of the following month;
- b) An annual fee of 3% of the annual gross gambling revenues, but not less than ALL 1,500,000, payable to the Gambling Supervisory Authority.

(*) *Gambling tax is capped to a certain limit or is calculated in a different manner for the following gambling categories:*

- *Sports betting;*
- *Casinos, casinos located at 5 stars hotels and resort casinos; and*
- *Horse racing betting.*

Certain categories of operators will also pay a percentage of their annual turnover to certain Ministries.

Transitory provisions

For the transitory period between the entry into force of the new Law (on 04.02.2016) and until the implementation and start of operation of COMS (date to be determined based on an expected decision of the Council of Ministers), tax liabilities and other fees due by gambling operators are to be calculated and paid based on the transitory provisions included in the new Law (i.e. not based on the new gambling tax system outlined above).

The gambling categories of 'casinos' and 'National Lottery' licensed prior to the entry into force of the new Law, will continue their activity in accordance with the license terms provided by the respective licenses.

Operators of 'electronic casinos' and 'traditional bingos' licensed prior to the entry into force of the new Law, may continue to carry out their activity in the current points/locations up to 31.12.2016.

Operators of 'sports betting', 'horse racing betting' and 'television bingo' shall be obliged to adopt their organization and functions and to pay the relevant license fees in accordance with the provisions of the new Law (and its sub-legal acts) within 31.12.2016.

III. New Double Tax Treaty with Kosovo

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 (click [here](#) for the full text) extended up to 31.12.2015. The new Double Tax Treaty (click [here](#) for the full text) 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

Based on the new DTT, a building site, a construction or an installation project will constitute a Permanent Establishment (PE) in the other country if it lasts therein 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.

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.

IV. Amendments to Decision no. 612, dated 05.09.2012 “On implementing provisions of the Law on Excise Tax”, as amended

Decision no. 38, dated 21.01.2016, published in the Official Journal no. 9/2016, dated 29.01.2016 and entering into force on that same date, explains certain provisions on the production and reimbursement process of excise tax on biofuels, fiscal stamps in storage warehouses, etc.



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