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Transfer Pricing Newsletter  
The new wave of regulations



## Transfer Pricing

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### I. Introduction

On April 24, 2014, the Albanian Parliament approved amendments to Law no. 8438 dated 28.12.1998 "On Income Tax", amendments to Law no.9920 dated 19.05.2008 "On Tax Procedures in the Republic of Albania". The amendments were published in the Official Gazette on May 20, 2014 and will enter into force on June 4, 2014.

The supporting Instruction "On Transfer Pricing" issued by the Ministry of Finance is currently available as a draft. Provisions relating to this Instruction may therefore be subject to change.

The amendments introduce new Transfer Pricing Regulations based on the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration (2010). In case of differences or conflicts between the OECD TPG 2010, the Albanian Regulations will take precedence.

The new provisions will have direct effect for every entity that engages in one or more **controlled transaction/s with associated parties**.

### II. Definition of associated parties

Two persons are considered to be associated parties where (i) one person participates directly or indirectly in the management, control or capital of the other person or (ii) when the same person or persons participate(s) directly or indirectly in the management, control or capital of both persons.

### III. Controlled transactions

For the purposes of the application of the Albanian Transfer Pricing rules only cross-border transactions will be considered as a controlled transaction, ie only those transactions effectuated between an Albanian resident /an Albanian permanent establishment of a nonresident and a nonresident/a foreign permanent establishment of an Albanian resident.

Transactions with a resident of a jurisdiction, listed in the Transfer Pricing Instruction of the Ministry of Finance (tax haven countries) will also be considered as controlled transactions notwithstanding the relationship between the parties involved in the transaction.

### IV. Documentation and Tax Return Disclosures

#### Documentation Requirements

The Draft-Instruction "On Transfer Pricing" requires that taxpayers prepare and submit sufficient information and analysis to verify that the conditions in their controlled transactions are consistent with the market principle, thus placing the initial burden of proof for demonstrating that conditions in their controlled transactions are consistent with the market principle on the taxpayer. This burden will be considered discharged where the taxpayer has prepared transfer pricing documentation in accordance with the Draft-Instruction "On Transfer Pricing".

Documentation requirements are in line with the OECD Transfer Pricing Guidelines. Documentation drafted in accordance with the EU Code of Conduct is acceptable.

Taxpayers with a turnover of less than 50,000,000 LEK will be considered to satisfy the transfer pricing documentation requirements even where, in the case of use of external comparable transactions, the set of external comparable uncontrolled transactions are updated only every third reporting period, provided there have been no material changes to the controlled transactions, the external comparable uncontrolled transactions or the relevant economic circumstances.

### Tax Return Disclosures

Based on the Draft-Instruction "On Transfer Pricing", taxpayers engaging in controlled transactions, which in aggregate, within the reporting period, exceed **50,000,000 LEK**, are required to complete and submit to the Regional Tax Directorate they are registered with, an 'Annual controlled transactions notice'. The form and content is specified in the Draft-Instruction "On Transfer Pricing".

#### Deadline to submit documentation

Transfer Pricing Documentation must be submitted within 30 days of request.

Due date for submission of the 'Annual controlled transactions notice' is the due date for submission of the 'Profit Tax Declaration and Payment Form', this is March 31 of the year following the reporting year.

### V. Interest and Penalties

In the case of failure to submit in time the 'Annual controlled transaction form' in conformity with the related provisions of the Instruction of the Minister of Finance 'On Transfer Pricing', the taxpayer shall be punished with a fixed fine of 10,000 ALL for each month delay.

In case of adjustment of tax dues for transfer pricing purpose, penalties amounting to up to 25% of the additional tax burden apply. Penalties will not be assessed if taxpayers are compliant with the documentation requirements in accordance with the new Transfer Pricing Rules.

### VI. Advance Pricing Agreements (APA)

#### Are APAs available?

A taxpayer may request that the tax administration enter into an advance pricing agreement to determine an appropriate set of criteria for the determination of conditions that are consistent with the market principle for certain future controlled transactions a defined period of time.

The Minister of Finance will issue a particular instruction on rules and procedures concerning advanced Pricing Agreements.

### Deloitte Contacts

#### Olindo Shehu, CPA

Partner  
Deloitte Albania  
[oshehu@deloittece.com](mailto:oshehu@deloittece.com)

#### Iris Toto

Senior Manager  
Deloitte Albania  
[itoto@deloittece.com](mailto:itoto@deloittece.com)

#### Amela Dybelli

Senior Consultant  
Deloitte Albania  
[adybelli@deloittece.com](mailto:adybelli@deloittece.com)

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