



## Tax&Legal Highlights

### Albania

#### Second tranche of 2019 fiscal package amendments enacted

On 21 and 28 December 2018, amendments to legislation included in the second part of the fiscal package for 2019 were published in Albania's official gazette. This article summarizes the key amendments relating to income tax, tax procedures and VAT. Other changes impact excise duties and other national and local taxes. The changes are effective as from 1 January 2019 (unless otherwise stated).

#### Income tax

The main objectives of the changes to the income tax law are to extend the taxable base by broadening the definition of Albanian-source income, while relieving the tax burden on certain categories of income.

#### Definition of Albanian-source income

The following sources of income are considered as Albanian-source income and as a result, are taxable in Albania at 15%:

- Income from services rendered by nonresidents to an Albanian resident, regardless of where the services are provided or payment

is made. Previously, only income from services rendered by nonresidents in Albania was considered Albanian-source income.

- Income derived from rights for the exploitation of mineral resources, hydrocarbon resources and other rights for the exploitation of natural terrestrial and marine resources (including in Albanian territorial waters) and information pertaining to those rights. The rights and related information are treated for tax purposes as if they were immovable property in Albania. As a result, income from their alienation (e.g. a transfer of ownership) also is considered Albanian-source income.
- Income earned by nonresidents from the transfer of ownership of shares and other participations, if throughout one year prior to the transfer of ownership, more than 50% of the value of the shares is derived directly or indirectly from immovable property, rights or related information as mentioned above.

### **Tax rate on distributions**

The withholding tax rate on dividends and other profit distributions to nonresidents and resident individuals is reduced from 15% to 8%. The reduced rate applies to distributions by Albanian resident companies of retained earnings of 2018 and previous years, including reserves and capitalized profits, provided the tax on dividends derived from retained earnings of 2017 and earlier years is paid by 30 September 2019; and the tax on 2018 profits is paid by 20 August 2019.

### **Personal income tax on employment income**

The upper limit of employment income taxable at 13% is increased from ALL 130,000 per month to ALL 150,000 per month. The following rates and thresholds apply:

<b>Taxable monthly employment income (ALL)</b>	<b>Personal income tax on employment income</b>
0 - 30,000	0%
30,001 - 150,000	13% of the excess over ALL 30,000
Over 150,000	ALL 15,600 + 23% of the excess over ALL 150,000

### **Declaration and payment of profit tax by nonresidents**

Nonresident persons with Albanian-source income not otherwise taxed in Albania are subject to profit tax on such income. A declaration of taxable income must be filed and the tax due paid by 31 March of the year following the tax year in which the income arose. The provisions requiring prepayments of profit tax by installments and for foreign tax credits do not apply.

The Minister of Finance is expected to issue further clarification of which nonresidents are subject to this obligation, and to specify the form of the declaration, together with the method of calculation and payment of the tax due.

## **Tax procedures**

**The key change to the law on tax procedures is the introduction of a general anti-avoidance rule. Other measures are intended to extend the range of alternative methods of tax assessment and reduce administrative and business costs.**

### **General anti-avoidance rule**

The tax authorities may disregard actions and transactions that are fictitious, having regard to all the facts and circumstances and that are proved as being undertaken for the purpose of obtaining a tax advantage in contravention of the principles of the tax legislation. Such actions/transactions may:

- Distort the principles of the tax legislation;
- Not be based on the market value principle;
- Lack substantial economic effect;
- Have a legal form that does not reflect economic substance; and/or
- Contain elements intended to avoid or reduce tax.

The burden of proof lies primarily with the tax authorities, who have the right to re-characterize the action/transaction and calculate the tax liability based on alternative tax assessment methods. The Minister of Finance is expected to issue further details of how the alternative methods may be applied.

### **Registration of entrepreneurs**

An entrepreneur (i.e. an individual engaged in a commercial activity) as defined in the law on entrepreneurs and commercial companies now may have a single tax identification number (NIPT/NUIS). When an entrepreneur registers a new business activity with the National Business Center (NBC), the NBC will issue a new certificate with the same NIPT/NUIS but with a different serial number (to identify separately the new activity). Previously, there were no specific restrictions on the number of NIPT/NUIS that the same individual could obtain.

Where an entrepreneur operates with more than one NIPT/NUIS and submits separate tax declarations for each, this is considered an indication of tax avoidance and the tax authorities may apply alternative tax assessment methods.

### **Transfer to the passive tax registry**

Taxpayers that notify the NBC that they have suspended their commercial activities are transferred to the passive tax registry only after paying all outstanding tax liabilities. The General Tax Directorate publishes on its official website an updated daily list of taxpayers in the passive tax registry, with whom all business transactions are prohibited. If an active taxpayer enters into a sale/purchase transaction with a passive taxpayer, both are subject to financial sanctions; previously, sanctions applied only to the passive taxpayer.

### **Tax deregistration**

The procedures for taxpayers to deregister from the tax authorities' registry have been revised depending on the type of taxpayer and where the deregistration request needs to be presented (i.e. to the NBC, a court or the tax authorities). Deadlines apply for the tax authorities to verify the taxpayer's tax position, conduct a tax audit and raise any objections to the deregistration. A requirement for deregistration is that all tax liabilities have been settled, including those arising on a liquidation.

### **Assessment and payment of tax and penalties**

Tax payments, other than payments for social and health insurance contributions, first are used to settle earlier liabilities of the same type of tax where the earlier amounts payable are not under appeal or subject to court proceedings and are not covered by any agreed installment payments. Any excess remaining after the earlier liabilities have been settled is used to settle current liabilities of the relevant tax.

The tax authorities only will issue an assessment where the tax assessed exceeds ALL 1,000 (previously, the minimum amount was ALL 100).

Where, as a result of a tax audit, a reduction of a credit balance declared by the taxpayer is assessed, a penalty of 20% of the difference between the balance declared and the amount reassessed by the tax authorities is introduced.

Failure to issue a tax invoice results in a penalty of 100% of the tax unpaid, in addition to the tax liability and related interest. If the taxpayer accepts the assessment, the penalty is reduced to 70%.

### **Taxation of deemed profit of a legal entity subject to a change of ownership and penalties for failure to notify such changes**

A number of amendments are made to the tax treatment on a change in ownership and penalties for failure to notify the appropriate authorities of the change. Further clarification of the provisions is required from the Minister of Finance.

If, during a tax period, the direct or indirect ownership of the capital or voting rights of a legal entity changes by more than 20%, the legal entity is treated as if it had sold and immediately required the relevant proportion of its assets at market value and is subject to profit tax on the profit from the deemed sale. The provisions apply only if, in the previous three years, the legal entity subject to the change of ownership has an average turnover of at least ALL 500 million.

Where a capital gain realized on the direct or indirect sale of the capital or voting rights of a legal person in Albania is considered Albanian-source income and the legal entity subject to the change of ownership calculates and pays the tax on the profit from the deemed sale of assets, the capital gain is not subject to profit tax in Albania.

The entity subject to the change in ownership must provide details to the tax authorities within 45 days. Failure to do so results in a penalty of 15% of the market value of the proportional share of its assets.

The legal entity also must notify the tax authorities within 45 days of a direct or indirect change in ownership of its capital or voting rights of more than 10% but less than 20% if, throughout the year prior to the change, more than 50% of the value of its shares/voting rights was directly or indirectly attributable to properties, rights and information deemed to be immovable property in Albania. A penalty of 5% of the market value of the shares applies for failure to notify, unless it is proved that the legal entity was not aware of the change of ownership.

### **VAT**

**The main objectives of the changes in the VAT legislation are to support domestic production (mainly in the agricultural and inward processing sectors), amend the treatment of advertising and introduce incentives for environmentally friendly initiatives:**

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- The VAT treatment of advertising service depends on the type of the supplying media. Advertising in written media remains exempt from VAT; advertising supplied via audiovisual media (e.g. television) is taxable at the reduced rate of 6% (previously the standard rate of 20% applied); and advertising via electronic media is taxable at the standard rate (previously exempt).
- Supplies of books are taxable at 6% (previously exempt).
- The supply of electric mini buses with the capacity for at least nine passengers for public transport, is taxed at 6% until 31 December 2021 and 10% thereafter.
- The VAT exemption for imports of certain types of agricultural machinery is extended to supplies within Albania. Certain agricultural inputs also are exempt from VAT. Lists of the exempt items are expected to be provided by the Council of Ministers. The rate of compensation for agricultural producers that apply the farmers' compensation regime is reduced to 6% from 20%.
- Veterinary services (other than for domestic pets) are exempt from VAT.
- The supply of goods processing services by subcontractors of economic operators in the inward processing industry are treated as exports and zero-rated for VAT purposes.

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