



## Tax&Legal Highlights

### Albania

#### Instruction "On value added tax"

In the Official Gazette no. 23 is published the Instruction of the Minister of Finance and Economy no. 5, dated 22.02.2019 'On some additions and amendments to the instruction no. 6, dated 30.01.2015 "On value added tax in the Republic of Albania", as amended' through which are reflected the amendments of the reduced rate of value added tax for certain supplies of goods and services as follows:

#### Supply of advertising services

It is reflected the change regarding the reduced rate for advertising supplies from audiovisual media:

- The supply of advertising services from audiovisual media is taxable at a reduced rate of VAT of 6%;
- Any other commercial activity performed by audiovisual media, with the exception of advertising is a taxable supply at the standard rate of VAT of 20%;
- The supply of advertising services by other taxable persons other than audiovisual media is taxable with the standard VAT rate of 20% (with the exception of advertising services by written media which is a supply exempt from VAT).

### **Exemption of newspaper, magazines and advertising from written media**

The following are no longer VAT exempted supplies:

- Supply of books provided in the traditional way (from 1 January 2019 is subject of the reduced VAT rate of 6%). If the materials are not offered in the traditional way of a book, the standard VAT rate of 20% will be applicable.
- Supply of advertising services from electronic media (from 1 January 2019 is a taxable supply subject of the standard VAT rate of 20%).

### **Supply of processing of goods under active processing regime**

It is reflected in the instruction the treatment as export at 0% VAT, the supply of services for processing of goods by subcontractors for economic operators that operate in the active processing sector.

The supply of services for processing goods from subcontractors equipped with the respective authorizations from the customs authority, on behalf of the companies of active processing will be considered as a supply of service taxable with a VAT rate of 0%.

To implement such treatment, each taxable person subcontractor, upon receipt of the authorization by the customs authority, has to submit a copy of the authorization, along with a copy of the contract between the parties to the Regional Tax Directorate, which then issues the "For inclusion in active processing operations" authorization within 30 days from the date of issuance of the authorization by the customs authority. Service supplies within the active processing regime can not be carried out by unauthorized subcontractors from the relevant customs and tax authorities.

### **Determination of network electricity losses during the distribution process**

In the case of electricity supply, "loss of electricity distribution" shall not be considered the percentage of electricity losses distributed by the Energy Regulatory Entity (ERE), but the percentage of losses as defined in the DCM no. 434, dated 20.05.2015 "On determining normatives for losses, damage and scratch during production, storage, transportation, etc., recognized for fiscal purposes".

### **Instruction "On income tax"**

**In the Official Gazette no. 23, dated 26.02.2019 is published the Instruction no. 4, dated 21.02.2019 "On some additions and amendments to the Instruction no. 5, dated 30.01.2006 "On income tax", as amended. This instruction has reflected and expanded the amendments introduced by the Fiscal Package 2019 and has also brought some additional treatments.**

### **Income of non-residents for services sourced in Albania**

Income from services performed by non-resident persons for resident persons shall be considered as sourced in Albania and taxable in Albania, unless exempt from taxation in Albania under the provisions of a double tax treaty.

**Income from immovable property, minerals, hydrocarbons etc. sourced in Albania**

Expansion of the income tax basis sourced in the Republic of Albania has been reflected, following the amendments to the article 4 of the law, considering as income sourced in Albania also income from:

- a. rights for exploitation of mineral resources, rights for exploitation of hydrocarbon resources,
- b. gains from the sale of shares (or similar interests) deriving their value in more than 50% from the property, rights or information related to them in the Republic of Albania,
- c. other rights for exploitation of natural onshore and offshore resources, including seas in the Republic of Albania, as well as
- d. information that pertains to these rights.

The instruction further clarifies the concept of the rights for exploitation of mineral and hydrocarbon resources, as well as the concept of the information related to such rights.

**Tax on dividends and profit share**

The reduced tax rate on dividends and profits distributed to shareholders from 15% to 8% is reflected.

**Transfer of ownership rights on immovable properties**

The instruction expands the concept of the transfer of ownership rights on immovable properties (building, land, and agricultural land) by including also the waiver of ownership rights on immovable properties besides sales and donations.

In the list of income exempt from personal income tax, the instruction reflects also for the cases of transfer of the ownership rights of ownership within the family between men, women, children, through donation and/or ownership waiver, when the property derives from compulsory joint ownership acquired under Law 7501, dated 19.07.1991 "On land", as amended.

**Non-resident persons subject to corporate income tax**

Non-resident persons that are not subject to income tax from the rights over the immovable properties, the rights over the immovable property or their alienation, shall be subject to corporate income tax. These non-resident persons are subject to the income tax resulting from the sale of shares if, at any time during the 365 days period before the alienation, more than 50% of the value of these shares derives directly or indirectly from the immovable property located in Albania, or from the rights or information related to such immovable property.

**Non-deductible expenses**

Are included in the list of non-decutible expenses:

- Expenses for per diems that exceed 50% of the annual gross salary fund;

- The surplus of the net interest expense that exceeds 30% of the EBITDA of the borrowing company in cases of loans, borrowings or financing from related parties.

### **Depreciation expenses**

The calculation of depreciation shall be terminated for all long term assets that do not contribute in the economic activity of the taxpayer.

### **Bad debt write-off for banks**

The instruction now reflects a provision regarding the treatment of bad debt expenses in the cases where the collateral is executed before the end of the 365 days deadline set by the law in cases of loans secured with movable or immovable properties. According to the amending instruction, if the movable or immovable property that secures the loan is executed before the 365 days deadline set in letter i) of the law, the previous bank provisions considered as deductible expenses shall continue to be considered as such.

### **Change of ownership and penalties for failure to notify**

A special paragraph is added in the instruction on income tax regarding the change of ownership thereby clarifying the purpose of such provision, modalities of application through some examples and notification requirements. The purpose of this paragraph is to enable taxation in Albania of gains from the indirect sale/transfer of valuable assets in Albania.

It is important to emphasize that the instruction clarifies that the notification requirement is not applicable in the cases where the sale of shares results in a change of less than 10% in the ownership of the Albanian companies because at such level, the Albanian company may not be aware of the sale transaction. However, even though there is no obligation for notification, the sale of shares is still taxable in Albania under the condition that more than 50% of the value of the shares derives from the immovable property in Albania.

### **Declaration and payment of corporate income tax from non-resident persons**

The amending instruction reconfirms the obligation for non-resident persons earning an income sourced in Albania that are subject of corporate income tax in Albania to submit a special form: "Form of Declaration and Payment by non-resident persons", the form of which is enclosed to this instruction.

### **Instruction "On national taxes"**

**In the Official Gazette no. 22 is published the Instruction of the Minister of Economy and Finance no. 9, dated 20.02.2019 'On some additions and amendments to the instruction no. 26, dated 04.9.2008, "On national taxes", as amended' through which are reflected the following amendments:**

### **Royalty tax**

The instruction reflects the amendments of the law regarding the royalty tax rates for 'chromium mineral for export' and the percentage of the royalty tax for the content of the metal ore in the mining byproduct.

### **Exemptions from carbon tax**

It is reflected in the instruction the exemption from carbon tax for quantities of gasoline and gasoil produced domestically, but exported outside the territory of the Republic of Albania. This way, the production entities are obliged to send information to the GTD by the 15<sup>th</sup> of the following month on which the tax payment is made, regarding: the quantities of gasoline and gasoil produced, the quantities exported, and the quantities on which taxes are paid.

### **Plastic/glass items and packages**

The amendments brought to the law as part of the Fiscal Package 2019 regarding the tax on plastic materials/items, imported raw materials for their production and of glass/plastic packaging are reflected.

For plastic items and imported plastic packaging, a tax rate of 35 leke/kg applies, with the exception of raw materials in primary forms (chapters 3901 to 3914 of the NKM) for which a tax rate of 25 leke/kg applies in case they are imported by domestic producers or domestic importers of plastic products. In case the imported raw materials in primary forms are not used for the production of plastic products in the country, but for other technological processes or for the production of other materials not categorized as plastic products, then the tax of 25 leke/kg is not paid. In order to obtain exemption from this tax, the importer must apply the procedure and submit the documentation specified in the instruction.

The tax on plastic packaging applies even when the plastic material occupies, at least, 51% of the total packing size that packs other imported products. In cases where in the materials/items imported under Chapter 39 of the NKM, the non-plastic part occupies more than 51%, the tax applies only to the part of the plastic mass.

For domestically produced and for imported glass packaging, a 5 leke/kg tax will apply. This tax applies to all glassware, in cases where the packaging is imported separately and in cases where the glass material occupies at least 80% of the total packing size that packs other products.

For the purpose of applying the tax on imported plastic/glass packaging, the importing entity shall divide the type of packaging of the imported products. For glass packaging produced domestically, the tax is included in the taxable value of the invoice.

The Customs Administration reimburses the tax on plastic/glass packaging, which is exported and for which the tax has been paid at the time of import or production. Reimbursement of tax can be made against the completion of an application and procedure that will have to be followed with the Customs Administration.

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