Draft Laws

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Draft Decision amending the Law on Tax Procedures

A new draft decision has been circulated by the Albanian government aimed at amending Law No. 9920 dated 19 May 2008 "On Tax Procedures in the Republic of Albania", as amended. Some of the main changes include:

- Central and regional tax administration employees will no longer be allowed to own or have relatives up to the third degree who own accounting or fiscal consulting offices. In cases of conflict of interest, the employee is fired without the right to be rehired.
- From the moment the new legislation is enacted until 31 March 2016, wholesalers who sell to individuals need to make sure that such sales do not exceed 10% of the taxable value (net of VAT) of the goods sold in the same period of the previous year. From 1 April 2016, fiscal coupons should not be issued for wholesales to individuals.
- The General Tax Directorate will create a database for the IMEIs of all mobile phones imported into or sold in Albania. Mobile phone importers and sellers must upload the IMEI numbers of their products, and do so for all the phones they release on the market. Any instance of incorrect upload or failure to upload IMEIs will result in a fine of ALL 30,000.

Tax Certificates

If taxpayers' financial statements are certified as compliant with the tax legislation by certified auditing companies, and are submitted to the tax administration by 31 March every year, they are considered by tax authorities to be of low audit risk. The model of the certificate is defined through a separate Instruction of Ministry of Finance. If a tax assessment by the tax authority finds that the financial statements are not in accordance with the fiscal legislation, the full tax obligation is imposed on both the taxpayer and the certifying company.

Penalties for non-compliance with tax procedures

- Any taxpayer not updating their place of business address or registering secondary addresses at the National Registration Centre will be considered an unregistered taxpayer and, as such, will be penalised accordingly.
- Late payment of income tax instalments is subject to a fine equal to 15% of the instalment value.
- In order to enforce the collection of unpaid taxes due, the tax authority may monitor the activity of the taxpayer in its premises and sequester at least 50% of its realised daily turnover, but never more than its outstanding tax obligation. Transfers of money from the taxpayer account will also be halted, as will any transfer of company shares / capital, unless those payments aim to pay 100% of the unpaid tax obligation.
- Taxpayers will be subject to a penalty of ALL 500,000 for having unregistered employees on their premises. The same penalty of ALL 500,000 is applicable for cases where the taxpayer has not declared an employee's full salary.
- The following penalties will also be changed:

	First instance	
Failure to issue fiscal coupon	**Currently**	**Proposed**
Taxpayers subject to income tax	ALL 50,000	100% of the tax liability, plus an ALL 10,000,000 penalty, and a tax revaluation of revenues for the previous six months
All other taxpayers	ALL 50,000	100% of the tax liability, plus an ALL 500,000 penalty, and a tax revaluation of revenues for the previous six months

Transport of goods without fiscal documentation	**Currently**	**Proposed**
Taxpayer subject to income tax	N/A	ALL 10,000,000, tax assessment, sequestration of goods and tax revaluation of revenues for the previous six months.
All other taxpayers	N/A	ALL 500,000, tax assessment and sequestration of goods
Penalties for incorrectly provided pre-stamped coupons	**ALL 30,000**	**ALL 60,000**

In addition, in an attempt to encourage voluntary declarations and improve the tax system, the tax administration will not file criminal charges against any taxpayer who self-corrects and declares a tax declaration which might have been purposefully erroneously declared in prior periods.

As an additional side note, for taxpayers that have been fined for filing declarations not applicable for them, the related penalties and interest generated up to 31 August 2015 will be removed from the tax system.

Draft Law on Income Tax

The Albanian government has issued for discussion with interested parties a new draft law covering aspects of corporate income tax, personal income tax and withholding tax. This draft law is expected to replace Law No. 8438, dated 28 December 1998 “On Income Tax”, as amended. Some of the proposed general changes include:

- The concept of a permanent establishment is provided for in more detail, similar to those provided by the OECD model. In particular, the draft legislation provides that a permanent establishment will also be created in cases of the provision of services in the Republic of Albania for a period totalling more than six months within any 12-month period;
- There will be a more detailed regulation for both personal income tax and corporate income tax on capital gains from the sale of securities;
- More strict and detailed provisions are provided for the maintenance of documentation for both personal income tax payers as well as corporate income tax payers;
- New compliance regulations for personal income tax, corporate income tax and withholding tax include calculations for the determination of the taxable base according to the type of income generated, deduction of tax credit and additional information on returns;
- A special consideration will be given to withholding tax and payroll agents who calculate and pay the tax at source.

We outline some of the main amendments in the following sections.

Personal Income Tax

Some of the main changes introduced in the new draft law regarding personal income tax include:

- Personal income includes employment income, business income, investment income and other income, providing for exceptions, deductions, rates and regulations according to each type of income;
- Business income for personal income tax payers will be regulated only by this law, abolishing even the current regulation on simplified income tax provided by Law no.9632, dated 30 October 2006 “On local taxes”, as amended;
- A new option for the deduction of expenses is introduced for business income of personal income tax payers, in addition to the general rule. Taxpayers with a determined turnover who choose not to document

expenses can consider as a deductible expense up to a certain percentage of their turnover;

- Upon the determination of the taxable result (resulting from all types of income), a taxpayer can deduct a personal allowance (draft amount ALL 180,000), dependent child allowance up to a limit per child, child education allowance up to a limit, medication (other than those covered by the compulsory health insurance) allowance and a small business allowance calculated as a percentage of the turnover.
- The personal income tax rate applicable to the taxable base will be calculated on an annual basis as follows:

Tax base	Tax rate
ALL 0 – 180,000	5%
ALL 180,001 – 1,560,000	13%
More than ALL 1,560,000	23%

- The investment income tax rate will be 15% of the tax base of the respective income;
- Upon calculation of the personal income tax liability, the taxpayer can deduct withholding tax payments on services, tax credit, personal income tax paid withheld from the monthly payroll, and any tax prepayments during the period.

Corporate Income Tax

Some of the main changes introduced by the new draft law regarding corporate income tax include:

- The thin capitalisation rule now provides that interest will not be considered deductible if excess net interest expenses (i.e. excess of interest expense over interest income) exceeds 30% of taxable earnings before interest and taxes;
- Impaired loans provisions of commercial banks and other financial institutions created according to supervisory rules issued by the Bank of Albania are expected to be considered as deductible, instead of the impaired loans provision calculated under IFRS.
- Valuation of a share exchange following the incorporation of a transfer of a branch will either be according to the market value or, if agreed between the parties and upon notification of the Tax Authorities, the purchase price of the shares being transferred;
- A new article regulating long-term contracts is introduced providing that the taxable income will be calculated according to the method of the percentage of completion, whereas the deductible expenses will be those rendered in the corresponding fiscal year;
- The list of deductible expenses includes most of the items in the current law, however, in a change from the current law, expenses for services rendered from non-resident taxpayers will be considered deductible in the period in which the payment is processed (currently deductible upon payment of withholding tax in the period the service is rendered);
- Depreciation for property, plant and equipment and amortisation for intangible assets remains unaltered. Depreciation for computers, information systems, software products, database and other assets in categories not defined in the law will be calculated on the basis of a

pooling system using the rates provided. The draft law also provides for depreciation to be calculated on an annual basis, regardless of the period (month) in which the asset is purchased / disposed. Moreover, assets with a net book value not exceeding ALL 10,000 will be considered as deductible expenses.

- Deductibility of bad debts (with the exception of bad debts of banks and financial institutions regulated by the Bank of Albania) forming part of the nominal value of any receivable from unrelated parties, previously accounted for as income, which remain unpaid, for which the taxpayer has taken reasonable steps to pursue payment, is allowed as per the table below:

% of bad debt deductibility	Period for which bad debt has been due
20%	6 months
40%	12 months
60%	24 months
80%	36 months

- Fiscal Losses can be carried forward for five consecutive periods (currently: three consecutive periods), if at least 25% of the direct or indirect ownership or voting rights remains unchanged (currently: carried forward unless more than 50% of direct or indirect ownership or voting rights changes);
- Corporate income tax prepayments will be applicable only if the payable corporate income tax of the previous year exceeds a specific amount. The prepayments will be calculated on a monthly basis at 1/12 of the preliminary corporate income tax liability.

Withholding Tax

Although the income subject to withholding tax derived from the payment processed by a taxpayer to a non-resident taxpayer or another resident remains the same, the new draft law differentiates between types of income according to the parties involved in the payment of the services.

As such, if paid by a resident taxpayer to a non-resident taxpayer, the following items are subject to WHT:

- Payments for technical, management and consultancy services;
- Insurance premiums;
- Fees for management and participation in directing councils;
- Payments for constructions, instalment, assembling or supervising work that relate to the above;
- Payments for performance of actors, musicians or sportspeople, including such payments made to persons that employ artists or sportspeople or act as intermediates in arranging shows or performances.

On the other hand, the following types of income are subject to withholding tax on the payment from resident taxpayers either to non-resident taxpayers or resident taxpayers:

- Dividends and profit distributions;

- Interest;
- Royalties and copyright income;
- Rents for property that is not part of the business assets;
- Income of individuals from games of chance and casinos.

Another change expected to be introduced is the method of declaring withholding tax. The new withholding tax return is expected to contain the following additional information to that required by the current form:

- Separate information for the taxpayer subject to withholding and the agent for the payment of the withholding tax;
- Tax residence for withholding tax is calculated from the payments to a non-resident;
- Type of income;
- Deductible amount (if applicable);
- Income payment date.

Please note that the above amendments have not yet been implemented and, as such, they remain at the status of draft laws, expected to change before final approval by the Albanian Parliament.

This Tax Newsflash is produced by PwC Albania's Tax and Legal Department