

Tax Update

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Muja Law brings you the latest issue of the *Tax Update*.

A major part of Law No. 29 “*On Income Tax*” (hereinafter referred to as “*Law No. 29*”) enters into force on **January 1st of 2024**. This Law was approved on March 30, 2023 and was published in the Official Journal No.70, dated 02.05.2023.

Law No. 29 provides rules on the income taxation for both natural persons and entities, as well as on income tax from inheritances, donations and gambling winnings. The purpose of such law is to create a comprehensive legal framework that governs the determination, declaration, and collection of personal income tax, corporate income tax and withholding tax, thereby providing a structured foundation for the regulation of various aspects of taxation.

Additionally, recently have also been approved some additional laws related to taxation in Albania and more specifically Law No. 94/2023, “*On some amendments to law No. 61/2012 ‘On Excise Duties in the Republic of Albania’*”, Law No. 95/2023, “*On some additions and amendments to law No. 9920, dated 19.5.2008 ‘On Tax Procedures in the Republic of Albania’*” and Law No. 96/2023, “*On some amendments to law No. 9975, dated 28.7.2008 ‘On National Taxes’*”.

Some of the most important aspects of the above laws are as follows:

❖ Law No. 29

Law No.29 is partially aligned with Council Directive (EU) 2016/1164, dated July 12, 2016 “*On the definition of rules against tax avoidance practices that directly affect the functioning of the internal market*”, as amended. CELEX number 32016L1164, Official Journal of the European Union, series L, no. 193, dated 19.7.2016, p. 1-14, as well as with Council Directive 2009/133/EC, dated 19 October 2009 “*On the common tax system applicable to*

mergers, divisions, partial divisions, transfers of assets and exchanges of shares in relation to different member states’ companies and for the transfer of the registered office of an SE or SCE between member states”, as amended. CELEX number 32009L0133, Official Journal of the European Union, series L, no. 310, dated 25.11.2009, p. 34-46

In virtue of Law No. 29, residents in the Republic of Albania are *subject to personal*

income tax and corporate income tax on taxable income from all sources, whether realized inside or outside the territory of the Republic of Albania in a given tax year. Non-resident persons, unless otherwise specified by law, are subject to income tax in the following cases:

- a) For their total worldwide taxable income attributed to a permanent seat in the Republic of Albania; and
- b) To the extent not covered by the above provision, their taxable income from all sources within the Republic of Albania in a given tax year.



Permanent seat

In virtue of Law No. 29, the concept of a permanent seat holds crucial significance and is determined as a specific place of business where the entirety or a part of the business activity of a non-resident person transpires. This encompasses a spectrum of entities, ranging from a place of administration, a branch, an office, a factory, a workshop, to a mine, an oil or gas well, a quarry, or any location engaged in the extraction of natural resources.

Moreover, the definition of a permanent seat includes also a building or construction site, an installation or assembly project, or any associated supervisory activity. However, this inclusion applies only if such sites, projects, or activities continue within the Republic of

Albania for a cumulative period exceeding six months within any twelve-month timeframe.

Furthermore, a permanent seat is also determined as any activity involving the use or installation of substantial equipment in connection with the search, extraction, or exploitation of natural resources. For such activities, the classification as a permanent seat is related to their duration, and more precisely when they extend beyond three months within any twelve-month period.

Additionally, a permanent seat is also considered the provision of services, including consulting services, by a non-resident person through their employees or other individuals, if they continue, for the same person or a related entity, in the Republic of Albania for a period or periods surpassing six months within any twelve-month duration.

As provided above, the comprehensive scope of the permanent seat concept underscores its pivotal role in determining the taxation obligations of non-resident entities within the regulatory framework of Law No. 29.

Tax Year

The tax year, as provided by Law No.29 starts on January 1st and concludes on December 31st of each calendar year.

Residence

In virtue of Law No.29 an individual qualifies as a resident taxpayer on personal income if they maintain a stable residence within the territory of the Republic of Albania throughout the entire tax year.

A person is also considered a resident taxpayer on personal income by staying in the Republic of Albania for a period or periods totaling 183 days or more during the tax year. The day of departure from the country and the day of entry into the country will be treated separately as days of his presence in the country.

In virtue of the law, a citizen of the Republic of Albania engaged in duties outside the nation's borders as an employee or official functionary of the government of the Republic of Albania is also considered a resident taxpayer on the personal income.

A resident taxpayer on personal income includes also a taxpayer who has a shop, a professional office, a factory or another place where the natural person exercises activity in the Republic of Albania, or has a usual residence in the Republic of Albania, unless the natural person has a permanent residence outside the Republic of Albania for the whole tax year and also has no permanent residence in the Republic of Albania

Lastly, a resident taxpayer on personal income tax includes also a person who has the center of vital interests in the Republic of Albania, which means significant personal or economic ties with the Republic of Albania.

Business Income

In virtue of Law No.29, business income includes, but is not limited to, income according to the following provisions, if they are not defined as income from employment:

- a) income of a natural person from any business activity of any kind, including any activity of self-employed or commercial individuals;
- b) income from interest, dividends, and royalties that are effectively related to the business;
- c) income from the sale of securities that are effectively related to the business;
- ç) income from the leasing of a business, regardless of whether the leasing includes all or a part of tangible or intangible assets;
- d) income from the sale of any type of business asset and liability, including the sale of the entire business;
- dh) capital gain realized from the transfer of business assets and liabilities in a business reorganization;
- e) gifts, grants, or subsidies received by a

- ë) person in connection with their business;
- ë) income realized by the natural person for any type of technical or digital automatic service fee;
- f) capital gains from the revaluation of business assets when these assets were given as a contribution in kind to the capital of a company, either in its establishment or capital increase;
- g) income from issuing or profiting from virtual assets;
- gj) income from transactions with virtual means that are effectively related to the business.

The annual taxable income from the business is defined as the total amount of the business income, reduced by the relevant expenses documented and carried out for the purpose of earning, preserving and securing income.



Investment Income

Law No.29 provides that investment income, if not considered as business income, includes the following income:

- a) income from interests, dividends, and royalties;
- b) capital gains from the alienation of titles or financial instruments;
- c) capital gains realized from life insurance schemes;
- ç) return of investment from private pension schemes;
- d) capital gain from the alienation of

- immovable property;
- dh) income from the rental of real estate;
- e) income from issuing or profiting from virtual funds;
- ë) income from transactions with virtual tools.

Taxable investment income for alienation of real estate

In virtue of Law No.29, taxable investment income from the alienation of property is defined as the **difference between the sale price and the purchase price of the property.**

The purchase price related to non-taxable investment income from the alienation of immovable property cannot be deducted from the tax base.

In the case of immovable property acquired by inheritance, donation, or relinquishment of ownership, the purchase price for tax purposes is the taxable value of the donated or inherited property at the time of receipt.



Rules for Controlled Foreign Entities

Law No.29 provides that when a natural person has an interest in a controlled foreign entity, the profits of which are not subject to taxation or are exempt from taxation in the Republic of Albania, any undistributed profits derived from

passive income must be included in the taxable income from the investment of the natural person.

Any foreign entity is considered a controlled foreign entity when the following are met:

- a) the natural person, or together with related persons, has a direct or indirect participation of more than 50 percent of the voting rights, or directly or indirectly owns more than 50 percent of the capital, or enjoys the right to receive more than 50 percent of the profit of that entity; or
- b) the actual tax paid on its profit by the entity is less than 50 percent of the tax that would have been charged to the entity if it had been a resident entity in the Republic of Albania.

The following profits are considered to be derived from passive income:

- a) interest or any income realized from financial assets;
- b) royalties or any other income realized from intellectual property;
- c) dividends and income from the sale of securities;
- ç) income from financial leases.

If passive income does not exceed 30 percent of the total profit of the controlled foreign entity, such provisions do not apply.

The law further provides that when the entity distributes profits to the natural person, and those distributed profits are included in the taxable income of the natural person, the amounts of income previously included in the tax base are deducted from the tax base for calculating the amount of tax that belongs to distributed profits.

When the controlled foreign entity has paid the tax in the state of residence on the income included in the tax base of the natural person, such tax can be credited against the general tax liability.

Taxation of Private Pensions

The contribution made by each member of a private pension fund is deducted from their personal income for tax purposes.

Annual Tax Base

In virtue of Law No.29, the annual tax base consists of:

- a) Annual taxable employment income;
- b) Annual taxable income from business;
- c) Annual taxable investment income.

Tax Rate

Law No.29 provides that taxable income from employment is taxed at the following progressive rates:

<u>Annual Tax Base</u>	<u>Tax Rate</u>
0 - 2 040 000 ALL	13%
Over 2 040 000 ALL	23%

Net taxable income (taxable profit) from business for commercial individuals and the self-employed is taxed at the following progressive rates:

<u>Annual Tax Base</u>	<u>Tax Rate</u>
0 - 14 000 000 ALL	15%
Over 14 000 000 ALL	23%

Investment income is taxed at the following rates:

- a) income from dividends: 8%;
- b) any other item of investment income: 15%.

Except as otherwise provided in the law, no cost shall be deducted against investment income.

Foreign Tax Credit

Law No.29 provides that if, during a tax year, a resident taxpayer of personal income tax realizes taxable income from sources outside

the territory of the Republic of Albania, the tax to be paid by that taxpayer for such income must be deducted from the amount of tax paid in a foreign country on such income. The amount of foreign tax payable must be certified by specific documentation issued for this purpose by the foreign country or countries where the income was realized.

The deducted amount of foreign tax paid cannot exceed the amount of personal income tax that would be payable for this income if it had been realized in the territory of the Republic of Albania.

The foreign tax credit must be calculated separately for each country if the income is realized from foreign sources in more than one country.

The foreign tax credit must be calculated separately for the income included in the annual tax base and for the annual investment income.



Taxpayer for Corporate Income Tax

In virtue of Law No.29, every entity is subject to corporate income tax, mainly including:

- a) collective companies;
- b) limited partnerships;
- c) limited liability companies;
- ç) joint-stock companies; or
- d) any other entity, including non-resident entities, not provided for in the above,

including entities subject to a special tax regime.

Residence

An entity is considered resident in the Republic of Albania in a tax year if:

- a) the entity is established in the Republic of Albania, or,
- b) at any time during the tax year, management and control of the entity's affairs are exercised in the Republic of Albania.

In addition to what is provided above, the management and control of the affairs of an entity are considered to be exercised in the Republic of Albania if the meetings of the governing board of the entity are held in the Republic of Albania, or at least two of the following conditions are met:

- a) decisions regarding the daily management of the entity are taken in the Republic of Albania;
- b) at least 50 percent of the entity's board members or managers are residents of the Republic of Albania;
- c) at least 50 percent of the entity's capital or voting rights are owned directly or indirectly by persons resident in the Republic of Albania.

Transfer Pricing

In virtue of the law an entity participating in one or more controlled transactions must determine whether the conditions of a controlled transaction are in accordance with the market principle. When the conditions imposed or dictated in one or more controlled transactions carried out by an entity are not consistent with the market principle, then the taxable profits of that entity may be increased to the extent that they are consistent with the market principle.

Law No.29 provides that the term "controlled transaction" means:

- a) any transaction between related persons when:
 - i. one of the parties in the transaction is resident and the other non-resident;
 - ii. one of the parties to the transaction is a non-resident who has a permanent seat in the Republic of Albania, to which the transaction is attributed, and the other party is another non-resident party;
 - iii. one of the parties to the transaction is a resident and the other party is a resident who has a permanent seat outside the Republic of Albania, to which the transaction is attributed;
- b) any business relationship between a non-resident and a permanent seat in the Republic of Albania of that non-resident;
- c) any business relationship between a resident and their permanent seat outside the Republic of Albania;
- ç) any transaction between a resident or a non-resident who has a permanent seat in the Republic of Albania, to which the transaction is attributed, with a resident of a jurisdiction listed by instruction of the minister responsible for finance.

The conditions of a transaction include, but are not limited to, financial indicators measured in the application of the appropriate transfer pricing method.



Income and Calculation of Tax Payable on Corporate Income

Unless otherwise provided by this law, all activities of an entity are treated as business activities, and all income of an entity constitutes income from the activity.

Tax Rate

The corporate income tax rate is 15%. Exceptionally, the tax rate for dividends is 8%, without deducting any costs.

Taxable Profit

Taxable profit includes any income realized by a person subject to the law during the tax year, deducting deductible expenses.

Taxable profit and deductible expenses are determined based on financial statements prepared in accordance with the legislation in force on accounting and financial statements, with the provisions of this law, as well as with the by-laws on its implementation.

Deductible Expenses

Deductible expenses are all expenses incurred by a person subject to this law during the tax year. These expenses, for the purchase of goods or services, must be actually incurred for the purpose of making a profit and in the interest of the business, documented by the taxpayer, and not subject to any restrictions defined by the law.

Inheritance, gift and gambling tax

In virtue of Law No.29, the following are exempt from taxation:

- a) donations and inheritance received from/or between the legal heirs in the first and second place, according to articles 361

to 363 of the Civil Code, as well as donations and inheritance between the relationship sister-brother;

- b) donations and inheritances received other than those defined above up to 5,000,000 ALL for taxpayers for immovable assets and up to 1,000,000 ALL for movable assets for taxpayers;
- c) the transfer of the right of ownership to the legal heirs according to articles 361 to 363 of the Civil Code, namely through donation and/or relinquishment of property, when the property derives from the compulsory co-ownership acquired on the basis of law no. 7501, dated 19.7.1991, "On land", amended.



Annual statement of personal income

An individual is obliged to submit an annual personal tax return when his/her annual taxable income is:

- a) more than ALL 1,200,000 per year from all sources: or;
- b) when he is in an employment relationship with more than one employer, regardless of the amount of income he receives from the employers;
- c) more than ALL 50,000 of any other income that is not subject to final withholding tax.

Other

Law No.29 provides that the table of personal income tax from employment for the period from June 1, 2023, to December 31, 2023, is as follows:

Salary Income in ALL/month		Taxable Income in ALL/month		Tax Rate in Percentage/month
From	To	From	To	
0	50 000	0	50 000	0%
50 001	60 000	0	35 000	0%
		35 001	60 000	13% of the amount over 35,000 ALL
60 001	More	0	30 000	0%
		30 001	200 000	13% of the amount over 30,000 ALL
		200 001	More	22 100 ALL + 23% of the amount over 200,000 ALL

Entry into force

This law has entered into force 15 days after publication in the Official Journal and extends its effects from January 1, 2024, with the exception of the letter "ç" of point 1 of article 69, which has begun its effects with the entry into force of this law and point 2 of article 69, which has begun its effects on June 1, 2023.

❖ **Law No.94/2023**

Law No. 94/2023 introduces significant amendments to *Law No. 61/2012, "On Excise Duties in the Republic of Albania,"* specifically addressing the calculation and indexation of excise duties.

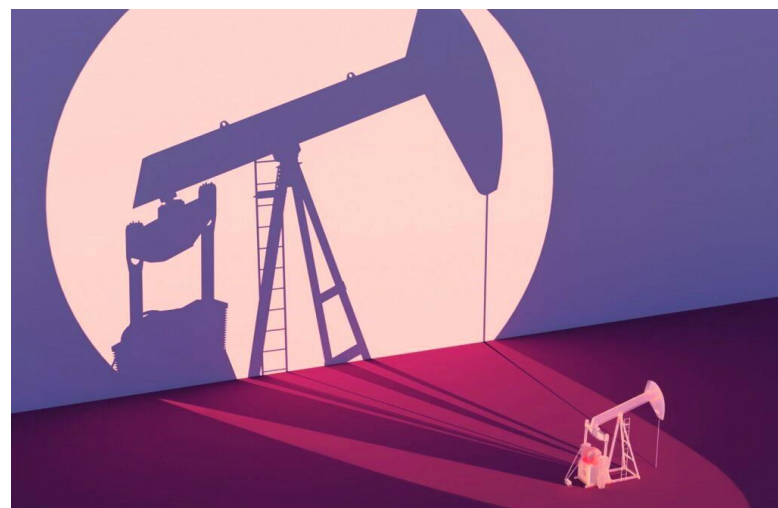
In virtue of the new amendment, the excise duty calculated according to point 2 of article 18 of the law is indexed every two years to the extent of the official rate of inflation announced by INSTAT, but not more than 1.5%, with the exception of tobacco and its by-products for which the excise duty will be applied according to the calendar defined in appendix no. 1 attached to the law.

The excise tax indexation, according to the above, is the sum of the announced rate of inflation of the second previous year plus the announced rate of inflation that results until the end of the 9th month of the previous year, but not more than 1.5%.

This means that the excise duty, a crucial component of fiscal policy, will undergo periodic adjustments in line with the official rate of inflation.

Entry into Force

This law is published in the Official Journal and begins its effects on January 1, 2024.



❖ **Law No.95/2023**

Law No. 95/2023 introduces crucial additions and amendments to *Law No. 9920, dated 19.5.2008, "On Tax Procedures in the Republic of Albania,"* reflecting a nuanced approach to tax terminology and reporting obligations.

The new amendment, provides that throughout the content of the law:

- a) The words "tax on profit" are now replaced by the words "tax on corporate profit."

- b) The words "simplified tax on profit for small business" have been substituted with the words "tax on personal income from business."



Basic terminology for the report for each country

In virtue of the new amendment, the following is provided:

- a) "Group" is a group of entities related by ownership or control such that consolidated financial statements are required to be prepared for financial reporting purposes under applicable accounting principles, or would be required if the capital interests of any of the entities would be traded on a public stock exchange;
- b) "Multinational corporate group" is any group that:
- includes two or more entities whose tax residence is in different jurisdictions or includes an entity that is resident for tax purposes in one jurisdiction and is subject to tax in respect of business carried on through a permanent seat in another jurisdiction; or
 - is not an exempt multinational corporation group;

- c) "Exempted multinational company group" is a group that has total consolidated income of the group less than 105,000,000,000 (one hundred and five billion) ALL during the fiscal year preceding the reporting fiscal year, as reflected in the consolidated financial statements for that fiscal year;
- ç) "Constituent entity" is:
- any separate business unit of a multinational enterprise group that is included in the consolidated financial statements of the multinational enterprise group for financial reporting purposes or would be included if the equity interests of such business unit were traded on a securities' public stock exchange market;
 - any business unit that is excluded from the consolidated financial statements of the multinational company group solely for reasons of size or materiality; and
 - any permanent seat of any separate business unit of the multinational group of companies included above, provided that the business unit prepares a separate financial statement for such permanent seat for the purposes of financial reporting, reporting in accordance with tax legislation, or internal management control;
- d) "Reporting entity" is the constituent entity, which is required to submit a report for each country, in accordance with the requirements of this law, in its jurisdiction of tax residence, on behalf of the group of multinational companies. The reporting entity is the ultimate parent entity;
- dh) "Ultimate parent entity" is a constituent entity of a multinational company group that meets the following criteria:
- owns directly or indirectly a sufficient interest in one or more other constituent entities of a multinational company group such that it is required to prepare consolidated financial statements in accordance with accounting principles generally applied in its jurisdiction of tax

- residence, or if its equity interests are traded on a public stock exchange in its jurisdiction of tax residence; and
- ii. there is no other constituent entity of the group of multinational companies that directly or indirectly owns an interest as described in the above;
- e) "Fiscal year" is an annual accounting period for which the ultimate parent entity of the group of multinational companies prepares its financial statements;
- ë) "Reporting fiscal year" is the fiscal year whose financial and operational results are reflected in the report for each country defined in this law;
- f) "Consolidated financial statements" are the financial statements of a multinational company group in which the assets, liabilities, income, expenses, and cash flows of the ultimate parent entity and constituent entities are presented as those of a single entity.

- b) when the constituent entity is not the ultimate parent entity, the identification data and tax residence of the reporting entity.



Obligation to submit the report for each country

Each final parent entity of a multinational company group, which is resident for tax purposes in the Republic of Albania, submits a report for each country, in accordance with the requirements of this law, to the tax administration of the Republic of Albania for their reporting fiscal year on or before the date defined in this law.

Notice

Each constituent entity, which is resident for tax purposes in Albania, must notify the tax administration no later than the last day of the reporting fiscal year of the group of multinational companies:

- a) if it is the final parent entity of the group;
- or

Deadline for Delivery

The report for each country, according to the provisions of this law, is submitted no later than 12 (twelve) months after the last day of the reporting fiscal year of the group of multinational companies.

Use and confidentiality of report information for each country

The tax administration of the Republic of Albania uses the report for each country for the purposes of assessing high-level transfer pricing risks and other risks related to tax base erosion and profit shifting to or from the Republic of Albania, including the assessment of the risk of non-compliance by members of the multinational group of companies with applicable transfer pricing rules and, where appropriate, for economic and statistical analysis.

Penalties related to reporting obligations for each country

Failure to fulfill the obligation to submit the report on time for each country, according to the provisions of this law, is punishable by a fine of 10,000 lek for each month of delay up to 12 months after the deadline defined in this law.

Entry into Force

This law enters into force 15 days after its publication in the Official Journal and begins its effects on January 1, 2024.



❖ Law No.96/2023

Law No. 96/2023 provides some amendments to *Law No. 9975, dated 28.7.2008, "On national taxes,"* as amended.

In virtue of the new amendments, in the item 6, of article 3 of the law, the words "for coal (according to the headings of the CNG 2701; 2702)" are replaced by the words "for coal (according to the heads of the CNG 2701; 2702; 2704)".

Additionally, in virtue of the new amendments, the carbon tax is set at the rate of:

- a) 1.5 ALL per liter for gasoline;
- b) 3 ALL per liter for diesel;
- c) for coal:
 - i. 4.5 ALL per kilogram from July 1, 2026;
 - ii. 6.5 ALL per kilogram for 2027;
 - iii. 9 ALL per kilogram for 2028;
 - iv. 12 ALL per kilogram for 2029;
 - v. 15.3 ALL per kilogram for 2030 and beyond;
- ç) 3 ALL per liter for solar;
- d) 3 ALL per liter for mazut;
- dh) 3 ALL per liter for kerosene;
- e) 3 ALL per kilogram for petroleum coke.

Such tax is not paid for the quantities of gasoline and diesel that are exported.

Entry into Force

This law enters into force 15 days after its publication in the Official Journal.



If you wish to know more on our publications, legal updates, tax updates, legal bulletins, or other articles, you may contact the following:

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Muja Law is a family-run law office where we work hard for the success of our clients and to provide excellence in legal service. Our roots go back to 2001 when our Managing Partner, Krenare Muja (Sheqeraku), opened her law practice office in Tirana, Albania. Krenare’s son Eno joined her in 2014, and the other son Adi entered the practice in 2019. What started in Tirana as a small, family-run law office has grown and flourished in the community for the last 20 years. The office consists of various respected and talented lawyers who possess outstanding educational and community service backgrounds and have a wealth of experience in representing a diverse client base in various areas of the law.

The office is full-service and advises clients on all areas of civil, commercial and administrative law. With significant industry expertise, we strive to provide our clients with practical business driven advice that is clear and straight to the point, constantly up to date, not only with the frequent legislative changes in Albania, but also the developments of international legal practice and domestic case law. The office delivers services to clients in major industries, banks and financial institutions, as well as to companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods. In our law office, we also like to help our clients with mediation services, as an alternative dispute resolution method to their problems.

While we have grown over the past 20 years and become recognized as one of Albania’s leading law offices, we are grounded in the essence of “who” we are and “where” we started. We understand the importance of family, hard-work, and dedication.

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