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Recently in the Official Journal No.11, dated 21.01.2021, among other, have been published the following legal acts:

- ❖ Law No.163/2020, dated 23.12.2020 “*On some amendments to Law No.8438, dated 28.12.1998 “On income tax”, as amended*”, (hereinafter referred to as “*Law No.163*”);
- ❖ Decision of the Bank of Albania No.4, dated 13.01.2021 “*On the suspension of profit distribution by banks*”, (hereinafter referred to as “*Decision No.4*”);

Some of the most important aspects of the above-mentioned legal acts are as follows:

Law No.163

Law No.163 provides that the following amendments are made to Law No.8438, dated 29.12.1998 “*On income tax*”, as amended:

Terminology

Law No.163 provides that the following terms have the following meanings:

“**Merger by absorption**” means any transfer from a legal person of all its business activities (*transferring person*) to a company (*acquiring company*) in exchange for the issuing or transfer of shares representing the capital of the acquiring company;

“**Transfer of a branch of activity**” is any operation through which a company (*transfer company*) transfers without dissolving one or more branches of its activity to another company (*absorbing company*), in exchange for the issuing or transfer of shares representing the capital of the acquiring company.

A “**branch of activity**” means all the assets and liabilities of a sector of a company, which from an organizational point of view, constitute an independent economic activity and also include the transfer of all assets and liabilities of a company.

“**Exchange of shares**” is any operation through which a company (*acquiring company*)

acquires a participation in the capital of another company (*acquired company*), in exchange for the issuing or transfer to the shareholder or partner of the purchased company, in exchange for their shares, of shares representing the capital of the acquired company and if applicable, a cash payment, given that the acquiring company acquires a majority of the voting rights in the company purchased with this operation.

“**Merger/union**” is any operation through which:

- i. one or more companies (*transfer companies*), which are dissolved without going through the liquidation process, transfer all their assets and liabilities to another existing company (*absorbing company*), in exchange for the issuing or transfer to the shareholder or partner of shares representing the capital of the acquiring company and if applicable, a cash payment; or
- ii. two or more companies (*transfer companies*), which are dissolved without going through the liquidation process, transfer all their assets and liabilities to a company they form (*absorbing company*), in exchange for the issuing or transfer to the shareholder or partner of shares representing the capital of the acquiring company and if applicable, a cash payment; or
- iii. a company (*transferring company*), which dissolves without going through the liquidation process, transfers all its assets and liabilities to the company (*absorbing company*) and holds all the shares that represent its capital.

“**Separation**” is any operation through which:

- i. a company (*transfer company*), which dissolves without going through liquidation, transfers all assets and liabilities to two or more existing or new companies (*host company*), in exchange for the issuing of proportional shares or transfer to the shareholder or its partner shares representing the capital of the host

company and if applicable, a cash payment; or

- ii. a company (*transfer company*) transfers one or more branches of activity to a company it forms (*host company*) in exchange for the issuing or transfer to the shareholder or partner of shares representing the capital of the receiving company and if applicable, a payment in cash.

“**Payment in cash**” is a cash payment made by an absorbing or purchasing company, except for the issue or transfer of shares, which do not exceed a total of 10% of the nominal value of the shares or transferred in exchange.



Valuation of shares' exchange

In virtue of Law No.163, shares or quotas received in connection with a merger by absorption or transfer of a branch or branches are valued at the market value of the transferred assets and liabilities of the business.

With a written request from both companies, the purchaser and the purchased, addressed to the tax administration, the shares received in connection with an exchange of shares, a merger or a separation, are valued at the initial

purchase price of shares that have been transferred.

Any cash-settled payment received in connection with the exchange of shares, a merger or a division, is recognized as a taxable capital gain up to an amount equal to the difference between the market price of the shares received and the purchase price of the shares or transferred quotas.

In virtue of Law No.163, these provisions apply only in relation to the shareholders or partners in the acquired company, if the shareholders or partners are resident in Albania.



Applicable rules on business assets and liabilities in reorganizations

Capital gain realized from the transfer of business assets and liabilities in connection with a merger by absorption, a transfer of a branch or branches of activity, a merger or a division, may be deferred until the sale of these assets and liabilities from the absorbing company.

This tax deferral is done at the request of both the transferring and the absorbing companies in the tax administration, where the absorbing company agrees to continue the valuation of

the transferred assets and liabilities received at their carrying amount immediately before transfer to occur.

In accordance with the depreciation calculations, the acquiring company will continue as if the assets and liabilities assumed are still owned by the transferring company.

These provisions apply to the transactions provided above, only if the transferring company and the absorbing company are both residents in Albania.

These provisions shall not apply if the transferring company does not hold shares received in the acquiring company for at least 3 calendar years without interruption following the year in which the transfer takes place, unless the transferring company demonstrates that the disposal of such shares is not being done with the predominant goal of reducing or avoiding the payment of profit tax in Albania.

Entry into force

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

Decision No.4

In virtue of Decision No.4, the Supervisory Council of the Bank of Albania has decided to suspend until December 31, 2021, the distribution by banks of the profit of 2020 and the profit that will be realized during 2021.

Entry into force

Decision No.4 has entered into force immediately and is published 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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