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The International Comparative Legal Guide to:

Private Client 2016

5th Edition

A practical cross-border insight into private client work

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EDITORIAL

Welcome to the fifth edition of *The International Comparative Legal Guide to: Private Client*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work.

It is divided into two main sections:

Eight general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 29 jurisdictions.

All chapters are written by leading private client lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Jonathan Conder and Robin Vos of Macfarlanes LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Pre-entry Tax Planning

1.1 In your jurisdiction, what pre-entry estate and gift tax planning can be undertaken?

The Albanian legislation does not provide any dispositions with regards to inheritance tax.

Law no. 8438, dated 28.12.1998 “On income tax in the Republic of Albania” (“the current Law on Income Tax”) provides only for personal tax of 15% calculated on capital gains earned on the sale or donation (gift) of an immovable property and payable by the alienating owner.

1.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

Individuals resident in Albania are liable to tax on their worldwide income and capital gains. This should be considered before taking up residence in Albania. Asset structuring may be needed to obtain the most beneficial tax treatment. Different investment vehicles may be used on a case-by-case basis.

1.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

Employment income of a permanent nature is subject to mandatory social security and health contributions in Albania.

There is an option to exclude from social security contributions foreign individuals employed in foreign entities (not obliged to register for tax purposes in Albania), who are seconded in Albania to carry out a certain job/service, based on a contract concluded between the foreign employer and an entity registered in Albania for tax purposes (provided the latter is not a branch or affiliate of the foreign contractor), upon completion of certain documents and of certain procedures.

There is also an option to exclude from health contributions individuals with no permanent dwelling in Albania, who are economically active (employed or self-employed) and/or earn regular income from movable and immovable property.

Prior planning may be necessary to mitigate the social security and health contributions burden in Albania.

2 Connection Factors

2.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

Domicile is not relevant for determining liability to taxation in Albania. However, the habitual residence or the permanent address of a person may be an important factor in determining whether the person is a tax resident in Albania or not (please refer to question 2.4 below).

2.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

This is not applicable in Albania.

2.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

Individuals who are resident in Albania are subject to Albanian income tax on their worldwide income. Non-resident taxpayers are subject to Albanian income tax on their Albanian-sourced income only.

2.4 If residence is relevant, how is it defined for taxation purposes?

Based on the current Law on Income Tax, an individual is considered resident for tax purposes in Albania if he/she:

- has a permanent home in Albania; or
- resides in Albania for more than 183 days within the same taxable period, regardless of whether the stay is interrupted or continuous; or
- is an Albanian citizen holding a consular, diplomatic or similar office abroad.

If there is a double tax treaty in place between Albania and the country of residence of the individual, the provisions of the treaty will prevail over the Albanian legislation. As such, the tax residence will be determined based on the rules provided by the respective double tax treaty.

Considering that a new draft Law on Income Tax is being discussed among groups of interest, and may be finalised and enter into force in 2016, the information above may be subject to change.

2.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

Nationality is not relevant to determining liability to taxation in Albania. It is taken into consideration in determining tax residence based on double tax treaties, only when no other connecting factors can be determined (please refer to question 2.7 below).

2.6 If nationality is relevant, how is it defined for taxation purposes?

There is no definition of nationality for tax purposes.

2.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

When there is a double tax treaty, tax residence is generally determined to be in Albania if the individual has a permanent home available to him or his family in Albania, or if he has personal and economic relations in Albania (a centre of vital interests), irrespective of his/her nationality (which is used as the last resort, when other connecting factors cannot be determined).

3 General Taxation Regime

3.1 What gift or estate taxes apply that are relevant to persons becoming established in your jurisdiction?

The current Law on Income Tax provides only for personal tax at the rate of 15%, calculated on capital gains earned on the donation (gift) of an immovable property and payable by the alienating owner.

3.2 How and to what extent are persons who become established in your jurisdiction liable to income tax?

Albanian resident individuals become subject to Albanian income tax on their worldwide income.

Employment income is taxed based on a progressive scheme:

Range of income (monthly)	Tax percentage
ALL 0 – 30,000	0%
ALL 30,001 – 130,000	13% of the amount above ALL 30,000
ALL 130,000 and above	ALL 13,000 + 23% of the amount above ALL 130,000

1 EUR equals approximately 140 ALL; 1 GBP equals approximately 190 ALL.

All other types of income (i.e. other than employment income) and capital gains are taxed at the flat rate of 15%. These include, but are not limited to, sale or gifts of immovable property, rent, interest, dividends, investments in securities, royalties and intellectual property, gambling and games of chance, etc. Based on the current Law on Income Tax, income tax is levied only on income received in cash (not in kind).

All residents whose gross annual income (including employment income and capital gains) reaches or exceeds ALL 2 million should compute and submit an Individual Annual Income Tax Declaration by the 30th April of the following year. This obligation is applicable also on non-resident individuals earning ALL 2 million or more of

gross annual income (including employment income and capital gains) from Albanian sources.

Considering that a new draft Law on Income Tax is being discussed among groups of interest, and may be finalised and enter into force in 2016, the information above may be subject to change.

3.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

All Albanian and/or foreign individuals that own buildings and/or agricultural land located in Albania are subject to an annual real estate tax in Albania, payable by the owner of the real estate to the respective local tax authorities.

The calculation of the real estate tax on buildings depends on the surface, location (district), year of construction and on the intended usage (residential, commercial, etc.). It varies from ALL 5 to 400 per square metre and is applied proportionally to the period of ownership. Individuals owning more than one residential building pay double the rate per square metre for the other (non-primary) residential buildings.

The basis for calculation of the real estate tax on agricultural land is the surface of the agricultural land in hectares, under the ownership of the taxpayer. It varies from ALL 700 to 5,600 per hectare depending on the category of the agricultural land, its usage and the region it is located.

Local tax authorities are entitled to reduce the rates above by 30% or increase them by 10% in the district under their administration.

Local tax authorities may impose also other fees and temporary taxes, which are determined based on decisions of the relevant municipality councils.

3.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

■ VAT

There is a new Law on VAT in Albania (Law no. 92/2014, dated 24.07.2014 "On VAT"), effective as 1.1.2015. It is conceived and structured in line with the EU Council Directive 2006/112/EC, with the aim to significantly harmonise the Albanian VAT legislation with the EU Directive in attendance of a full adaptation with the membership of Albania in the EU.

The standard rate of VAT is 20%. There is no reduced rate applicable.

An individual is obliged to register for tax purposes in Albania if he/she carries independent economic activity in Albania (involving supplies of goods and/or services, or import) with an annual turnover of more than ALL 5 million.

For the following types of activity, the turnover threshold for VAT registration purposes is zero (instead of ALL 5 million): lawyer; notary; specialised doctor; dentist; pharmacist; nurse; veterinarian; architect; engineer; laboratory-doctor; designer; economist; agronomist; authorised public accountant; approved accountant; real estate evaluator; as well as those performing economic activities in the hotels and accommodation sector.

A few VAT exempt supplies, which are not in line with the EU Directive, reflect the fiscal incentive policies adopted by the Albanian government for certain economic sectors: supply of pharmaceutical products (drugs/medicaments); supply of ID cards; supply of printing house services for newspapers; supply of newspapers, periodicals and books; supply of advertisement services by written and electronic media; supply of goods and services classified as related to the research phase of hydrocarbon operations; etc.

There are also a few exemptions from VAT on importation of goods not in line with the EU Directive: import of machinery and equipment for investments of contractual value higher than ALL 50 million; for inward processing and agribusiness activities; for the production activity of small enterprises; import of goods and services related to the research phase of hydrocarbon operation; etc.

Unlike the EU Directive, the importation of gas, electricity, heat or cooling energy through a distribution networks is taxable at a standard rate.

■ **Customs duties**

There is a new Customs Code in Albania, conceived and structured in line with the Union Customs Code under Regulation no. 952/2013. The majority of the provisions of the new Customs Code are expected to enter into force on 01.06.2017.

Customs duties are charged according to imported goods' classification in a six-digit harmonised system and are revised on an annual basis. For many imported items, minimum/reference custom values are applied. Customs tariffs applicable on products originating from EU members (having the EUR 1 certification) are zero.

Major exemptions from customs duties are applicable for:

- goods imported under government agreements, and where the duty exemption is clearly stated in the agreement;
- certain imports for contractors in the exploration phase of hydrocarbon operations;
- humanitarian aid;
- goods imported for charitable, philanthropic, or assistance purposes by not for profit organisations, religious institutions, public entities; and
- goods imported for trade promotion purposes and advertising.

As of 1.1.2015, there are special exemptions from customs duties (including VAT on import) for certain imports of goods:

- goods with negligible value imported by individuals (less than EUR 150 for a delivery);
- gifts (less than EUR 45 for a delivery);
- goods in the personal luggage of the traveller (less than EUR 430 for air and sea travellers, less than EUR 300 for other travellers); and
- educational, scientific and cultural materials; etc.

■ **Excise taxes**

The Law on Excise Taxes is harmonised with the EU Directive 2008/118/KE. Excise tax is applicable on a number of goods such as tobacco, alcoholic drinks, soft and fresh drinks, coffee, derivatives of petroleum, pneumatic tyres, etc. Tax is levied either as a percentage rate or as a fixed rate per unit, depending on the commodity.

3.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

No, there are no special anti-avoidance taxation provisions applying to offshore arrangements of Albanian resident individuals.

3.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

Yes. Under the current Law on Tax Procedures, tax authorities may re-characterise transactions and re-assess the related tax liabilities if such transactions are entered with related parties or if they do not entail any substantial economic effects or are not performed due to any substantial economic reasons.

Since 2014, the legislation on Income Tax provides an extensive regulation for Transfer Pricing, which is based on the OECD Transfer Pricing Guidelines (of 2010).

Effective as of November 2015, Albania has introduced stricter rules against tax avoidance and tax evasion consisting of high penalties and charges with criminal offence to taxpayers in the following cases:

- repeated non-declaration of new employees at least one calendar day before they join;
- repeated non-declaration of the full remuneration of employees;
- repeated failure of wholesalers to maintain, utilise, or transport goods accompanied by tax documents;
- maintenance or usage of fiscal equipment or sales monitoring systems which differ from the electronic cash registers as determined by the Albanian legislation; and
- repeated failure to issue fiscal coupons and fiscal invoices.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

■ **Acquisition**

The acquisition of assets is not subject to any special taxes, except for the liability to pay VAT, customs duties and excise taxes on import, if and where applicable. Exemptions from customs duties on imports apply in certain cases for individuals (refer to question 3.4 above).

For investments in immovable properties, investors are subject to tax of impact on infrastructure and new constructions. This tax is calculated as 1% to 4% of the value of the new investment and is payable upon receipt of the construction permit.

■ **Holding**

There are no tax liabilities related to the holding of assets, other than:

- property taxes on buildings and agricultural land, which are treated in question 3.3 above; and
- annual registration tax of road transport vehicles (varying from ALL 2,400 to 8,000 depending on the type of vehicle).

These are equally applicable on individuals as well as on corporations.

■ **Disposal**

Disposal of assets (sale or gift) is subjected to income tax of 15% on the capital gains earned, for both individuals and corporations.

In the case of individuals, any capital losses incurred are not available for deduction or carry forward.

In the case of corporations, a transfer tax is also applicable on the sale or gift of immovable property (other than gifts to state and public entities, religious communities and non-profit organisations). It is payable by the seller/donor, immediately before the registration of transfer of ownership in the Real Estate Registration Offices. For buildings it is calculated based on the surface area and the tax rate varies from ALL 100 to 2,000 per square metre, based on the building type and location. For other types of immovable property it is calculated at 2% of the sale price.

Supplies (sale or gift) of buildings and land located in Albania are exempt from VAT.

■ **Income from investment**

Income from investment is taxed on a receipt basis in the case of individuals. Whereas, in the case of corporations, they are taxed on an accrual basis.

Corporations are obliged to retain and pay to Albanian tax authorities withholding tax of 15% on the gross amounts of the following payments of dividends, profit distribution, interest and other similar payments made to individuals (not registered as businesses).

Rent of immovable property is exempt from VAT, except for certain cases (e.g. lease of buildings for less than two months; lease of permanently installed equipment and machinery, etc.). However, there is an option for lessors who are registered for VAT purposes, to treat the rent of the building as taxable at a standard rate (instead of VAT exempt), upon following certain procedures.

Transactions, including negotiation but not management or safekeeping, in shares, interests in companies or associations, debentures and other securities, are exempt from VAT.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

Assets imported into Albania may be subject to customs duties, excise taxes and VAT on import. Customs duties are levied on the price of assets plus any additional costs related to their import (transport, insurance). VAT at the standard rate of 20% is levied on the value of imported goods plus customs duties plus excise tax, if any.

There are certain exemptions from VAT on importation of goods related to investments of corporations; certain exemptions from customs duties related to corporations; as well as certain exemptions from customs duties (including VAT on import) related mainly to individuals. Please refer to question 3.4 above.

Based on the regulations of Bank of Albania, individuals are obliged to declare in front of customs authorities the source and purpose of transferring across the relevant border any amounts of cash above ALL 1 million (or the equivalent in foreign currency).

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

There are no particular tax issues in relation to the purchase of residential properties by individuals in Albania.

Under Law no. 7980, dated 27.07.1995 "On the Acquisition of Plots", foreign individuals/entities cannot acquire and own land, unless it is proven that the investment to be made therein exceeds three times the value of the land. The latter is determined by the Council of Ministers. Until such investment is made, the foreign individual/entity may use the land under a lease contract. Alternatively, foreign individuals/entities may establish a company under the Albanian legislation, which can then freely acquire and own any type of immovable property.

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

Under the current Law on Income Tax, the following entities are subject to profit tax in Albania:

- juridical persons (limited liabilities, joint-stock companies etc.) that are registered for VAT purposes;

- partnerships or other joint ventures incorporated or organised under a foreign law but that conduct their activity in the Albanian territory and are registered for VAT purposes; and
- any other persons, irrespective of the status or legal form of registration or organisation, if they are subject to VAT and their annual turnover is more than ALL 8 million.

Resident entities are subject to profit tax at the rate of 15% on their worldwide profits and gains.

Non-resident entities are taxable in Albania to the extent that they gain income from certain Albanian sources (permanent establishments, Albanian real estates, financial investments, etc.).

An entity is considered to be resident in Albania for tax purposes, if it:

- has its seat (head office) in Albania; or
- its effective management is placed in Albania.

The current Law on Income Tax does not provide any time limitations regarding permanent establishments. As a result, a foreign company is considered to create a permanent establishment in Albania if it performs services through physical presence of its staff or other personnel engaged appositely, regardless of the duration of such presence.

However, if there is a double tax treaty in place between Albania and the country of residence of the corporation, the provisions of that treaty related to permanent establishment determination shall prevail.

The Albanian tax legislation does not impose the obligation to register a permanent establishment with the National Registration Centre and the Albanian tax authorities. The permanent establishment of a non-resident corporation implies that it will be subject to withholding tax of 15% on gross income, retained by the Albanian beneficiary of the services (in the role of a 'tax agent') upon payment to the foreign supplier for such services.

Furthermore, registered businesses in Albania are obliged to retain and pay to Albanian tax authorities withholding tax of 15% on the gross amounts of the following payments made to non-resident corporations and un-registered individuals:

- dividends;
- profit distribution;
- interests;
- payments made for copyright and intellectual property;
- payments made for technical services, management services, financial services and those of insurance;
- payments made for management and participation in the directive councils;
- payments for construction, installation or supervising works related to them; and
- payments for rents; etc.

If there is a double tax treaty in place, the withholding tax may be reduced or avoided based on the respective provisions and upon following of certain procedures.

Considering that a new draft Law on Income Tax is being discussed among groups of interest, and may be finalised and enter into force in 2016, the information above may be subject to change.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

The main tax liabilities payable by a corporation in Albania are:

- Profit Tax or Corporate Income Tax;
- VAT;

- Excise Tax;
- social security and health insurance contributions (partly withheld and partly contributed by the employer);
- Employment Income Tax withheld;
- local taxes (e.g. tax on immovable property, transfer tax, tax of impact on infrastructure and new constructions, tax for use of public spaces, tax on advertising signs, environmental taxes, etc.);
- national taxes (e.g. royalty tax, carbon tax on gasoline and gasoil, circulation tax on gasoline and gasoil, tax on used transport vehicles, tax on packaging, tax on fishing activity, port taxes, etc.); and
- withholding tax for payments to non-resident persons and non-registered individuals.

5.3 How are branches of foreign corporations taxed in your jurisdiction?

Branches of foreign corporations are subject to profit tax (15% of taxable income minus tax-deductible expenses) and to all other taxes listed in question 5.2 above, as if they were locally established corporations.

The main difference between establishing a branch versus a subsidiary in Albania, is that the transfer of their net profit to the foreign parent company is not subject to withholding tax, unlike the distribution of dividends from a subsidiary which is subject to a withholding tax of 15% (except when a double tax treaty is effective and provides for a lower tax rate).

Based on the practice of Albanian tax authorities to date, branches are regarded as tax residents in Albania for the purpose of application of double tax treaties.

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

Albania has entered into bilateral conventions on avoidance of double taxation of income and capital with 40 countries, out of which 37 are effective (Poland, Romania, Malaysia, Hungary, Turkey, Czech Republic, Russia, Macedonia, Croatia, Italy, Bulgaria, Sweden, Norway, Greece, Malta, Switzerland, Moldova, Belgium, China, France, Egypt, Netherlands, Kosovo, Serbia & Montenegro, Austria, Latvia, South Korea, Bosnia & Herzegovina, Slovenia, Spain, Ireland, Germany, Singapore, Qatar, United Kingdom, Kuwait and United Arab Emirates) and three are not yet effective (Luxemburg, Estonia and India).

Double tax treaties prevail over the Albanian legislation as regards the determination of the tax residence of individuals and corporations (in case of conflicts), the determination of the country with the right to tax on income and capital earned by individuals and corporations (whether the residence country, the source country, or both), the income tax rates applicable (if reduced) and the methods to avoid double taxation.

However, double tax treaties are not automatically applied in Albania. The General Tax Directorate has the sole authority to approve the application of treaty provisions in the specific circumstances of taxpayers. As such, the latter are required to follow certain application procedures to benefit from exemptions, reduced rates and credits.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

Double tax treaties in which Albania has entered are principally based on the OECD Model Convention.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

Albania has not entered into estate and gift tax treaties.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

This is not applicable.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

Issues of private international law are governed by Law no. 10428, dated 02.06.2011, "On Private International Law" ("Private International Law"). Pursuant to article 33, (i) inheritance of movable property is governed by the laws of the country where the testator had his habitual residence at the time of death, whilst (ii) inheritance of real estate is governed by the law of the country where the real estate is located.

The testator may choose as applicable the law of a particular country, if at the moment of such choice or death, the testator was a national or had permanent residence in such country. Determination of applicable law shall not affect the right to the legal reserve defined in the Albanian Civil Code (article 379). Based on this right, a testator cannot exclude from legal succession his minor children or other minor heirs, who inherit by substitution (minor children of deceased sons), or other heirs unable to work if they are called to inherit, nor may affect by will in any manner the share to which those heirs are entitled, unless they have become unworthy to inherit.

In order to be formally valid, pursuant to article 35 of the Private International Law, creation, amendment and revocation of a will should meet the validity criteria of either: (i) the law of the country in which the testator compiled the will; (ii) the law of the country whose nationality the testator had at the time of compiling the will or at the time of his death; (iii) the law of the country in which the testator had his permanent residence at the time of compiling the will or at the time of his death; or (iv) the law of the country in which the real estate is located.

Meanwhile, according to article 34 of the Private International Law, the capacity to compile a will is governed by the law of the country, whose nationality the testator had, at the time of compiling, amending or revoking the will.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

According to the Private International Law, ownership, possession and inheritance of real estate is governed by the law of the country in which the real estate is located. However, it must be noted that in principle, in

case of consorts, the marital property regime is determined by the law of the country which governs their personal relationship.

8 Trusts and Foundations

8.1 Are trusts recognised in your jurisdiction?

Albanian legislation does not recognise trusts.

8.2 How are trusts taxed in your jurisdiction?

This is not applicable in Albania.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

This is not applicable in Albania.

8.4 Are foundations recognised in your jurisdiction?

Yes. The funding, registration and functioning of foundations is governed by Law no. 8788 no. 07.05.2001 “On non-profit organisations”, Law no. 8789, dated 07.05.2001 “On registration of non-profit organisation” and articles 54-63 of the Albanian Civil Code.

8.5 How are foundations taxed in your jurisdiction?

Pursuant to article 40 “Tax Exemptions” of the Law “On non-profit organisations”, non-profit organisations are exempted from income tax on donations, grants, bank interests and membership quotas received in the context of their activity. This exemption is applicable provided that the received funds are destined to non-profitable activities for which the organisation has been registered.

On the other hand, foundations are responsible for calculation and payment of withholding tax and also for the calculation and payment of employment income tax and social and health contributions for their employees.

Non-profit organisations should register for VAT purposes and pay VAT in case they conduct taxable supplies against consideration.

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

According to article 57 of the Albanian Civil Code, the Incorporation Act of the foundation may be invalidated by the founders, prior to the registration or prior to commencement of the activity. The Incorporation Act of the foundation may be contested also by the heirs or the creditors of the founders.

Heirs remain responsible up to the value of their part of inheritance for any obligation related to the foundation that is charged to the testator.

9 Matrimonial Issues

9.1 Are civil partnerships/same sex marriages permitted/recognised in your jurisdiction?

Matrimonial issues in Albania are regulated by Law no. 9062, dated 08.05.2003 “On the family code” (“Family Code”). To

date, same sex marriages/partnerships are not recognised by the Albanian legislation. The Family Code provides that marriage can be concluded between a man and a woman of at least 18 years old. Meanwhile cohabitation is defined as a factual union between a man and a woman living as a couple, with a common life that is stable and continuous.

9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

■ Matrimonial Property Regimes

According to the provisions of the Family Code, the matrimonial property regimes of spouses are:

- the matrimonial property regime as provided by the law (“Community Regime”); and
- the matrimonial property regime as defined by the spouses through an agreement.

■ Community Property Regime

The community property regime is applicable in the absence of a specific agreement by the spouses designating their own regime, which from its side must not be in contradiction with the applicable legislation.

In principle according to the community property regime, the matrimonial wealth consists of:

- a) wealth obtained by the spouses, together or separately, during the marriage;
- b) income from specific activities of each spouse during the marriage;
- c) profits from the properties of each spouse, which have been acquired during marriage; and
- d) commercial activity conducted during marriage.

■ Joint Wealth

The wealth of the spouses is presumed as joint, unless one spouse proves its personal character.

■ Personal Assets

Personal property which is not considered part of the matrimonial wealth is:

- a. property which prior to the marriage was jointly owned by one of the spouses and another person or property over which the spouse has a using right;
- b. property acquired during marriage through gifts or inheritance unless in the instrument evidencing the gift or in the will it is stated that property is given to both spouses;
- c. property which is strictly for the personal use of each spouse and property gained as accessories from personal wealth;
- d. work equipment necessary for the profession of one of the spouses, except for those that have been specified for the administration of a commercial activity;
- e. property gained from an award of personal damages, except for pension funds obtained as the result of a partial or full loss of work capacity;
- f. property gained from the transfer of the above-mentioned personal wealth; and
- g. property gained through exchange with the above property.

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

The Albanian legislation permits the spouses to change the legal property regime through a marriage agreement.

Through this agreement, spouses can agree to include movable property acquired prior to marriage and income from personal wealth during marriage in the matrimonial wealth, change the rules regarding administration, have unequal shares, have joint property etc. The marriage agreement can be compiled before or during the marriage.

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

According to the Family Code, if spouses have entered an agreement defining the separation of their financial goods, such agreement will be applied in case of divorce.

If spouses have no agreement in force, when they agree on divorce, they may submit to the court for approval a settlement agreement that stipulates the terms for marriage termination including financial provisions on the separation of goods.

In case that the request for divorce has been filed only by one of the consorts, the competent court, after reviewing all facts, shall decide regarding the separation of goods.

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

Article 6 of the Law no. 108/2013, dated 28.03.2013 “On Foreigners” provides that the general conditions in order to enter the Republic of Albania are:

1. the foreigner is in possession of a travel document valid for at least three months after the date of entry;
2. the foreigner is in possession of a valid Albanian visa (if applicable) or possesses a multiple entry visa issued by Schengen states, US, Great Britain, or Republic of Ireland and which have been previously used in one of these countries;
3. the foreigner is not considered a threat to public order or public health;
4. the foreigner has no entrance limitation in his name;
5. the foreigner is not a debtor of the Albanian migration authorities in relation to administrative measures under the provisions the Law “On Foreigners”; and
6. the foreigner is not declared as *persona non grata*.

Subject of the discretion of the migration authorities, a foreigner may be required to present additional documents that prove the reasons of entry into the Republic of Albania.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

In relation to the entry into the Republic of Albania, the legislation does not provide for any special procedure related to investors. However, depending on the position of an individual in a foreign investing company and/or the amount of the investment, there are incentives in terms of procedures, type of work permit (if applicable) and residency permit to be obtained by the foreigner.

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

Albanian citizenship is governed by Law no. 8389, dated 05.08.1998, “On the Albanian Nationality”. According to it, in order to obtain

Albanian nationality, the following conditions should be met:

1. the foreigner is at least 18 years old;
2. the foreigner has at least five years of legal residence in Albania (i.e. has been equipped with Albanian residency permit for at least the previous five consecutive years);
3. the foreigner has adequate habitation and sufficient income in Albania;
4. the foreigner has not been sentenced for an offence for which the legislation provides a sentence of not less than three years of imprisonment;
5. the foreigner has basic knowledge of the Albanian language; and
6. the security of the Republic of Albania is not affected.

Exemption from some of the above conditions are provided in case of economic, cultural or national interest and/or in other cases provided by legislation in force.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

There are no tax implications related to the Albanian citizenship. Please refer to question 2.5 above.

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

In Albania there are no special programmes for attracting foreigners to obtain Albanian citizenship.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

There are no specific agreements for automatic exchange of information entered into by Albania. However, Albania signed the Convention of Mutual Administrative Assistance in Tax Matters and is a signatory state of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

According to the Law no. 9917, dated 19.05.2008 “On Prevention of Money Laundering and Terrorist Financing” (“Anti-Money Laundering Law”), before establishing a professional relationship, subjects of this law (financial institutions, stock markets, gambling, consultancy professionals, etc.) should perform a due diligence which comprise a set of measures in order to identify customers, the ultimate beneficial owner, the structure of ownership and control of legal entities, the nature and the purpose of transactions or relationships.

The “Beneficial Owner” shall mean the individual, which owns or, is the last to control, a customer. This also includes those persons exercising the last effective control on a legal entity. The last effective control is the relationship in which a person:

- a. owns through direct or indirect ownership, at least 25 percent of stocks or votes of a legal entity;
- b. owns personally at least 25 percent of votes of a legal person, based on an agreement with the other partners or shareholders;
- c. decides *de facto* the resolutions of the legal person; or
- d. controls the legal entity by means of selection, appointment or dismissal of the majority of administrators.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

There is no such public register.



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