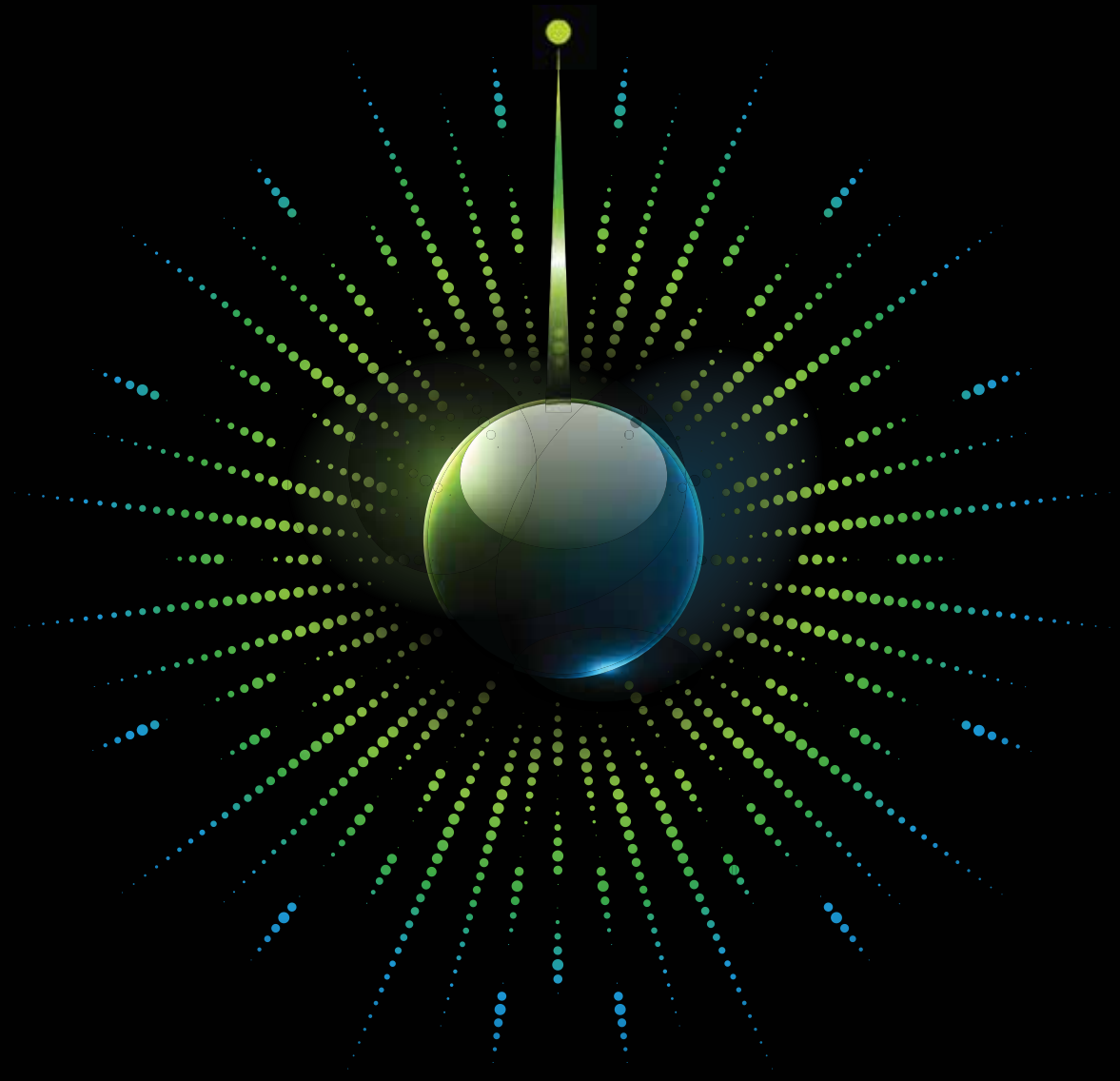


# TaxNews

**New Law on Income Tax**



**Deloitte.**

## New law on income tax

Law No. 29/2023 "On income tax" ("the new law") dated 30 March 2023 was published in Albania's official gazette on 2 May 2023. The new law introduces significant changes to corporate income tax, individual income tax, and withholding tax and will become fully effective on 1 January 2024, when it will replace Law No. 8438, "On income tax," as amended ("the current law") dated 28 December 1998. The relevant bylaws providing further detailed instructions on the implementation of each article of the new law are expected to be approved and issued by August 2023.

Key corporate income tax amendments in the new law include a broader definition of tax residence, more stringent requirements for the application of the dividend participation exemption, the extension of limitations on interest deductibility, simpler depreciation methods on noncurrent assets, rules for bad debt recognition, specific provisions for long-term contracts, the introduction of an exit tax, and changes to the loss carry forward rules. From an individual income tax perspective, important amendments include a broader definition of tax residence, the categorization of income into three distinct types (employment, business, and investment), an extension to the scope of employment income, the introduction of controlled foreign company rules, the introduction of taxation of inheritances and gifts, and a revised tax rates system for employment income as from 1 June 2023. The most significant withholding tax change is the introduction of a 15% withholding tax obligation on interest and royalties paid to Albanian residents. The new law also updates and/or introduces new terms and definitions such as "physical person," "self-employed individual," "commercial individual," "entity," "permanent establishment," "technical service," "fee for technical service," "fee for automated digital service," "dividend," "interest," "royalties," "private pension," "virtual tool," and "mining."

This article provides a detailed overview of the key changes introduced by the new law and references the comparative provisions of the current law, where applicable.

## Corporate income tax (CIT)

### Taxpayers subject to CIT

The new law states that the following taxpayers are subject to CIT:

- Entities established according to the relevant law in force on entrepreneurs and commercial companies (e.g., general partnerships, limited partnerships, limited liability companies, joint stock companies);
- Entities subject to a special tax regime (e.g., petroleum operators); and
- Any other entities, including nonresident entities, in respect of income attributable to a permanent establishment (PE) in Albania.

The current law defines taxpayers subject to CIT as entities established in Albania with annual income exceeding ALL 8 million (approximately EUR 70,000), as well as entities established or organized in accordance with a foreign law and that perform their activities in Albania. Entities with annual income not exceeding ALL 8 million are currently subject to the "simplified profit tax on small business," which is regulated by Law No. 9632, dated 30 October 2006 "On local taxes."

The new law repeals the current provisions related to the simplified profit tax on small business. As from 1 January 2024, all entities will be subject to CIT regardless of the level of their annual income.

The entities exempt from CIT under the new law are similar to those exempt under the current law, with only limited changes.

## **Residence**

According to the new law, an entity is deemed to be resident in Albania if it is established in Albania or has its place of effective management and control in Albania at any time during the tax period (a calendar year). The management and control of an entity is considered to be exercised in Albania if the meetings of the management board of the entity are held in Albania, or at least two of the following criteria are met:

- Decisions regarding the daily management of the entity are made in Albania;
- At least 50% of the board members or directors are Albanian residents; or
- At least 50% of the entity's capital or voting rights are owned directly or indirectly by persons resident in Albania.

Under the current law, a legal entity is deemed to be resident in Albania only if it has its head office or place of effective management in Albania.

## **Permanent establishment**

The new law introduces the following time limitations in the definition of a PE:

- Construction or project PE – for a period or periods cumulatively exceeding six months within any 12-month period;
- Natural resources activity PE – for period or periods cumulatively exceeding three months within any 12-month period;
- Services PE – for period or periods cumulatively exceeding six months within any 12-month period.

The current law does not determine any time limitations for PEs.

## **Taxable profit**

According to the new law, taxable profit includes any income (revenue) earned by an entity during the tax period, reduced by deductible expenses. Income and expenses are determined based on the financial statements prepared according to the Law No. 25, dated 10 May 2018 "On accounting and financial statements".

## **Long-term contracts**

The new law defines a "long-term contract" as one concluded for the purpose of manufacturing, installation, or construction; or the performance of services, for a term exceeding (or expected to exceed) 12 months.

Revenues relating to a long-term contract must be recognized in the amount corresponding to the part of the contract completed in the respective tax period. The percentage completion is to be determined either by reference to the ratio of

actual costs to overall estimated costs, or by reference to national or international accounting standards.

Deductible expenses relating to these contracts will be taken into account in the tax period in which they are incurred.

There are no specific provisions for long-term contracts under the current law.

## **Deductible expenses**

The new law defines as tax deductible all expenses incurred by an entity during a tax period, to the extent that such expenses are incurred to generate income and in the interest of the economic activity, properly documented, and not subject to any deductibility limitations specified by the law.

## **Nondeductible expenses**

The new law amends or adds a number of items on the list of nondeductible expenses provided by the current law, including the following:

- Depreciation expenses according to accounting rules;
- Interest paid that exceeds the average annual 12-month loan interest rate set by commercial banks, as officially published by the Bank of Albania, excluding interest on loans provided by microfinance institutions;
- Expenses incurred in respect of personal consumption of shareholders, partners, or persons executing power of attorney over the affairs of the taxpayer and their family;
- Employee life and health insurance premiums that exceed 5% of the gross salary per tax period;
- Expenses for technical services, consultancy, and management invoiced by a nonresident if not paid by the taxpayer within the tax period (where such expenses are paid later, they are tax deductible in the tax period when they are paid);
- Expenses linked to income not included in taxable profit; and
- Bribes.

## **Depreciation**

Costs related to the acquisition, construction, or improvement of fixed assets that are not subject to depreciation are deductible in the fiscal year in which the fixed assets are disposed of, provided that income from the disposal is included in the taxable profit.

The new law provides that depreciation in the year of acquisition or entry into use of an asset (whichever is the later) and in the year of disposal of the asset is to be calculated in proportion to the period of use during that year. Under the current law, an asset is depreciated starting from the first day of the month following the month in which the asset is first used until the end of the month of disposal of the asset.

The new law provides that all assets are to be depreciated on a straight-line, individual asset basis at the following rates to be allowable for CIT purposes:

Category of asset	Rate of annual depreciation
Buildings, installations, and constructions with a useful life of more than 15 years	5%
Intangible assets	15%
Computers, information systems, software products, and equipment used in connection with database back-ups	25%
All other assets	20%

Under the current law, the first category includes fixed assets with an expected useful life of more than 20 years (instead of 15 years), for which the rate of annual depreciation is 5% on net book value. All other assets (excluding intangibles) are currently depreciated based on the declining balance method.

The new law introduces a limitation on the depreciation expenses for employee cars with the capacity for up to four passengers. The depreciation base cannot be higher than 50% of the purchase and any modification costs, including VAT. The full purchase and modification cost cannot exceed ALL 10 million. Under the current law, there are no such provisions.

The new law does not contain any transitional provisions for the depreciation of assets first brought into use in 2023 and earlier years.

## Inventory valuation

Under the new law, the accounting method used to value inventory and work-in-progress cannot be changed more than once every five years.

“Small inventory” (a term used but not defined in the new law) is to be depreciated at the rate of 50% in the year of purchase and 50% in the following year. A definition is expected to be provided in the relevant bylaws.

## Interest deductibility

According to the new law, interest deductions are limited to 30% of EBITDA (earnings before interest, taxes, depreciation, and amortization). The excess of net interest over 30% of EBITDA may be carried forward for up to five consecutive years and be deducted subject to the same EBITDA restrictions. This rule does not apply to banks, non-bank financial institutions, and insurance and leasing companies, or to long-terms loans for the purpose of financing infrastructure projects undertaken in Albania.

Under the current law, the EBITDA rule applies only to related party borrowing.

## Bad debts

The new law provides for the acceleration of the recognition of bad debts as deductible expenses provided that the taxpayer has taken reasonable steps to pursue payment from the unrelated party, as follows:

Period of time for which bad debt is outstanding as at year end	Percentage recognition of bad debt
6 months	20%
12 months	40%
24 months	60%
36 months	85%

To recognize 100% of the receivable as a bad debt, the taxpayer must have followed all necessary legal procedures for debt collection.

Under the current law, bad debts can be recognized only where there is a binding court decision confirming the noncollectible amount.

When a bad debt for which a deduction has previously been claimed is recovered in full or in part, the amount recovered must be added to the taxable profit in the year of recovery under both the current and new laws.

## Transfer pricing

The transfer pricing provisions in the new law are similar to those in the current law. The new law introduces some changes in terminology, such as adjusting the financial indicator to the median of the arm's length range result where it falls outside the arm's length range. Under the current law, the financial indicator is adjusted to the mean average of the arm's length range results.

The deadline for submitting transfer pricing documentation following a request by the tax authorities is increased from 30 to 45 days under the new law.

## Dividend participation exemption

The new law provides an exemption from CIT for dividend income if:

- The recipient holds at least 10% of the shares or voting rights of the payer company; and
- The minimum shareholding/participation has been held for an uninterrupted period of at least 24 months.

Where the minimum 24-month holding period is not met, an exemption may still be available for dividend income by providing a guarantee to the tax authorities for the amount of tax otherwise due, until the condition is fulfilled.

Under the current law, dividends and profit distributions are exempt from CIT if the payer company is subject to CIT, regardless of the percentage shareholding or the period of time for which the shareholding is held.

### **Capital gains on a business reorganization**

The new law contains rules for the taxation of business reorganizations which are similar to those in the current law. As a general rule, a business reorganization comprising only Albanian resident entities does not give rise to capital gains taxation on assets transferred under the reorganization, unless a cash payment is received in excess of a certain threshold, when specific taxation rules apply.

### **Capital gains on a change of ownership**

The new law provides a special tax regime for a change of ownership of entities:

- Owning rights for the use of mineral assets, rights for the use of hydrocarbon assets, or other rights for the use of natural resources in Albania, as well as the information pertaining to these rights, which are treated as immovable property for the purposes of the law;
- Engaging in activities in the telecommunications sector; and
- Operating as financial institutions.

Similar rules apply to ownership changes under the current law but they are not limited to certain types of entity.

### **Exit tax**

The new law introduces an exit tax mechanism in Albania. A transfer of assets is considered taxable if:

- A resident taxpayer transfers business assets from an Albanian head office to a foreign PE and Albania no longer has the right to tax the transferred business assets as a result of the transfer; or
- A resident taxpayer transfers their tax residence to another jurisdiction, with the exception of those business assets that remain effectively connected to an Albanian PE.

The taxable base that will be subject to exit tax is the amount equal to the market value of the transferred business assets less their value for tax purposes at the time the assets leave Albania. "Market value" for these purposes is the amount for which a business asset can be exchanged, or the amount freely negotiated between an unrelated buyer and seller in a direct transaction.

Resident entities will be liable to calculate, declare, and pay exit tax via the CIT return, which must be submitted by 31 March of the year following that in which the liability arises. Nonresident entities will be liable to calculate, declare, and pay the tax by the same deadline via an income tax return prepared in accordance with the instructions expected to be issued by the Minister of Finance and Economy.



## **Carry forward of losses**

Under the new law, tax losses pertaining to 2024 and subsequent years may be carried forward and utilized against taxable profits of the next five years, with the earliest losses utilized first. The carry forward period under the current law is three years.

Tax losses arising in 2024 and subsequent years may be lost if there is a change of more than 50% in value or number in direct or indirect ownership of the shares or voting rights of the entity, together with a change in business activity. In the current law, losses expire if there is a change of ownership of more than 50% of the shares or voting rights by value or number regardless of whether the business activity changes.

The new law does not contain any transitional provisions regarding the carry forward of losses arising prior to 2024.

## **CIT calculation**

Under the new law, CIT payable is to be calculated by applying the relevant CIT rate to the taxable profit (after deducting any tax losses available) and then reducing this amount by: (i) any withholding tax paid by a third party on the entity's behalf; (ii) any foreign tax credit; and (iii) the advance installments of CIT paid during the tax period.

In the case of a CIT overpayment, the taxpayer will have the option of requesting a repayment, in which case it will be refunded within 60 days of the taxpayer's application; otherwise, the overpayment will be treated as an advance payment for the subsequent tax period.

The current law does not provide for the deduction of domestic withholding tax or the repayment of CIT.



## CIT rate

The standard CIT rate applicable under the new law to all entities and types of income is 15%, with a few exceptions as indicated in the following table. The table includes the reduced rates and exemptions provided under the current law subject to transitional provisions in the new law.

The CIT tax rate applicable on dividend income is 8%, excluding any deduction of costs.

Sector/taxpayer	CIT rate	Date through which rate applies
Production or development of software	5%	31 December 2025
Entities with annual income not exceeding ALL 14 million, except for entities providing professional services expected to be listed in a decision of the Council of Ministers	0%	31 December 2029
Accommodation activities certified as agritourism	5%	31 December 2029
Accommodation facilities provided by four- and five-star hotels with special status	0%	For a period of 10 years starting from the commencement of the activity, but no later than three years from the date of obtaining the special status (which must occur on or before 31 December 2024)
Agricultural cooperative companies	5%	31 December 2029
Automotive sector	5%	31 December 2029

## Individual income tax

### Residence

Under the current law, an individual may be regarded as tax resident in Albania where the individual: (i) has a permanent home in Albania; (ii) is present in Albania for more than 183 days within the same taxable period, regardless of whether the stay is interrupted or continuous; or (iii) is an Albanian national holding a consular, diplomatic, or similar office outside Albania.

The new law introduces two additional criteria for tax residence:

- The center of the individual's vital interests is situated in Albania; or
- The individual has a shop, professional office, factory, or other place where they exercise their activity in Albania.

### Taxable income

The new law defines taxable income for individual income tax purposes as employment income, business income, and investment income, paid both in cash or in kind. Income provided in kind is to be assessed at market value.

The current law does not specifically mention business income and investment income, nor does it specify how income in kind is to be assessed.

### Employment income

The new law contains a separate article listing the types of remuneration that are considered to be "employment income," depending on the payer (employer or other person), the form (in cash or in kind), and the time the remuneration is earned. New concepts have been introduced in terms of employment relationships, such as the transfer and hiring out of employees, the person providing work instructions, and the payer of employment income. A new provision has been added related to "employment income paid to the employee through a workforce agent not resident in Albania."

Income generated by self-employed individuals involved in professional activities will be considered as employment income if the following conditions are met:

- At least 80% of the total income generated is derived directly or indirectly from a single customer; or
- At least 90% of the total income generated is derived from no more than two customers.

Notwithstanding the above, where the professional services are provided only to nonresidents, the income generated will be treated as business income.

Certain payments in cash or in kind are exempt from employment income tax, including:

- Meals, nonalcoholic beverages, work equipment, medical treatment, and other benefits provided at the employer's premises and available equally to all employees;

- Reimbursement of work-related travel and accommodation expenses, as well as travel allowances;
- Compensation paid to employees in the case of illness or other personal difficulties, as stipulated by the respective legislation in force; and
- Employer contributions for life, health care, and occupational injury insurance.

## Employment income tax rate

As from 1 January 2024, the tax rate on employment income will be 13% on annual taxable income of up to ALL 2,040,000 and 23% on income in excess of that amount. The tax will be withheld monthly by the employer and paid to the tax authorities by the 20th day of the following month in the case of entities and by the 20th day of the month following each three-month reporting period for self-employed individuals. A new form, known as the "statement on personal status" will be introduced to be signed by the employer and employee. The employer named on the form will calculate the tax payable on employment income and will deduct from the tax base each month 1/12th of the relevant personal allowance, depending on the level of annual income. Where an employee has more than one employment, the second employer must apply the progressive tax rates as specified but without deducting any personal allowances.

A transitional period will apply between 1 June 2023 and 31 December 2023, when employment income will be subject to progressive rates as follows:

Monthly employment income	Monthly taxable income	Tax rate
Up to ALL 50,000	Up to ALL 50,000	0%
ALL 50,001—ALL 60,000	ALL 0—ALL 35,000	0%
	ALL 35,001—ALL 60,000	13% of the amount over ALL 35,000
Over ALL 60,000	ALL 0—ALL 30,000	0%
	ALL 30,001—ALL 200,000	13% of the amount over ALL 30,000
	Over ALL 200,000	ALL 22,100 + 23% of the amount over ALL 200,000

## **Business income and expenses**

The new law provides a list of income that will be considered as business income for self-employed individuals, including:

- Income from a business of any kind;
- Income from interest, dividends, royalties, and the sale of securities which are effectively related to the business;
- Income from business leasing of both tangible and intangible assets;
- Income from the sale of any type of business asset or liability, including the sale of the entire business;
- Capital gains realized on the transfer of business assets and liabilities in the course of a business reorganization;
- Gifts, grants, or subsidies received by an individual related to their business;
- Income generated by individuals from any type of technical or digital service fee;
- Capital gains arising from the revaluation of business assets granted as an in kind contribution to the capital of a company, either when the company was established or on a subsequent capital increase; and
- Income from mining and other transactions involving digital and virtual assets which are effectively connected to the business.

Where a taxpayer's annual turnover does not exceed ALL 10 million, the new law allows the taxpayer to choose between:

- Deducting a lump sum for business expenses between 30% and 90% of business income, where the percentage depends on the type of business activity; or
- Claiming a deduction for the actual documented expenses incurred.

After choosing which method to apply, the taxpayer may change that decision only once every three years. The taxpayer is entitled to a deduction for the personal allowance regardless of the method chosen to claim expenses.

## **Business income tax rate**

The tax rate on business income for individuals will be 15% on annual net taxable income (taxable profit) up to ALL 14 million and 23% on annual net taxable income exceeding ALL 14 million.

Self-employed individuals operating a commercial business with net annual taxable income up to ALL 14 million will continue to be subject to a 0% business income tax rate until 31 December 2029. Self-employed individuals engaged in a list of services and professional activities expected to be determined by a decision of the Council of Ministers will not benefit from this incentive.

## **Investment income**

The new law defines as "investment income" income from interest, dividends, and royalties; the alienation of titles and financial instruments (that are not part of business assets); the alienation of immovable property (that is not part of business assets); life insurance and private pension schemes; rental of immovable property; and mining of and other transactions involving virtual assets/crypto assets.

The new law also specifies certain types of income which will not be taxable investment income and sets out the rules for determining the taxable investment

income from the alienation of titles, financial instruments, virtual assets, and immovable property.

### **Investment income tax rate**

The new law specifies an investment income tax rate of 15% on all types of investment income, other than dividends for which the income tax rate is 8%. This is the same as under the current law.

### **Annual personal income tax (PIT) base**

The new law introduces the concept of the annual PIT base determined as the sum of annual taxable income from employment, business, and investment, reduced by allowances and deductions. Taxpayers subject to PIT will be allowed to deduct from the tax base:

- A personal annual allowance of:
  - ALL 600,000 where annual income does not exceed ALL 600,000;
  - ALL 420,000 where annual income is between ALL 600,000 and ALL 720,000; and
  - ALL 360,000 where annual income exceeds ALL 720,000;
- An allowance of ALL 48,000 for every dependent child; and
- Expenses of up to ALL 100,000 per year for the education of dependent children, for taxpayers whose annual taxable employment and/or business income is less than ALL 1.2 million.

### **Annual personal declaration of income**

The new law sets new criteria to be fulfilled for individual taxpayers to be obliged to submit an annual personal income declaration. An individual must submit the declaration if:

- Their annual gross income from all sources exceeds ALL 1.2 million;
- They have more than one employer; or
- They have income of more than ALL 50,000 from other sources that has not been taxed at source.

The PIT payable is calculated by applying the relevant PIT rate to the respective type of income separately and then deducting any PIT on employment income withheld by employers, any withholding tax paid by a third party, any foreign tax credit, and any advance business income tax payments during the tax period.

Where there is an overpayment of PIT, the taxpayer may claim a reimbursement, which case a refund will be made within 60 days of the taxpayer's application; otherwise, the PIT overpayment will be considered as an advance payment for the subsequent tax period.

## **Controlled foreign companies (CFCs)**

The new law contains new rules to determine passive income for CFC purposes, which is defined as investment income derived by an individual, either personally or when conducting professional or commercial activities on a self-employed basis, from an interest in a controlled nonresident entity. Passive income comprises:

- Interest and any other income realized from financial assets;
- Royalties and any other income realized from intellectual property;
- Dividends and income from the sale of titles; and
- Income from financial leasing.

## **Taxation of private pension funds**

The new law provides for a deduction for PIT purposes for contributions to private pension funds. The maximum monthly deduction is limited to the minimum gross national monthly salary (currently ALL 40,000). Employers also will be entitled to a deduction for CIT purposes for contributions to private pension funds made on behalf of their employees, subject to the same limits as for employee contributions. Monthly payments by a fund to its members will be taxable only to the extent of the investment return, at the relevant PIT rate(s).

Individuals that previously made pension fund contributions out of taxed income will be entitled to a 10% reduction in the tax due on the investment return.

Investment returns, including capital gains from investments made with pension fund assets, will not be taxed while the assets are being administered by the fund manager.

## **Taxation of inheritances, gifts, and income from gambling**

The new law specifies and determines the definitions and rules for the taxation of inheritances, gifts, and income from gambling. The rules will apply to Albanian resident individuals who derive such income within or outside Albania; and to nonresident individuals that receive such income from Albanian sources.

Under the new law, inheritances, gifts, and income from gambling are defined as follows:

- Inheritances are movable or immovable property or cash transferred on the death of an individual to their successors without any compensation in exchange;
- Gifts include the gifting of movable and immovable property or cash received without any compensation in exchange; and
- Income from gambling is the income realized from different categories of gambling as specified in the respective legislation.

Although the current law provides some regulations on the donation of immovable property and gambling income, it lacks any provisions regarding inheritances.

## Withholding tax (WHT)

### Income subject to WHT

According to the new law, WHT must be retained from payments of the following types of income to residents and nonresidents:

Type of income	Subject to WHT if paid to a resident or PE of a nonresident	Subject to WHT if paid to a nonresident	Applicable WHT rate
Dividends	Yes, subject to the participation exemption in the case of companies	Yes	8%
Interest	Yes	Yes	15%
Royalties	Yes	Yes	15%
Rents	Yes, only when paid to individuals	Not clearly determined	15%
Services and other types of income	Yes, only when paid to individuals	Yes	15%

Under the current law, interest and royalties paid to an Albanian resident or PE of a nonresident are exempt from WHT.

### Income not subject to WHT

The following types of income are not subject to WHT under the new law:

- Income paid to recipients that are exempt from income tax;
- Dividends qualifying for the participation exemption;
- Interest paid to banks and other financial institutions; and
- Income excluded from the definition of technical services or fees for technical services such as income from the transportation of passengers and goods, or reinsurance services.

### WHT agent

The WHT agent will be required to declare and account for the WHT by the 20th day of the month following the month in which the relevant income was paid. In the case of dividends that have been declared but not paid, WHT must be paid by the end of



the third month following the month in which the decision to distribute the profits was made by the statutory body of the entity.

Under the current law, the deadline for the payment of WHT on dividends is the earlier of 20 August of the year in which the dividends are declared or the 20th day of the month following the month in which the dividends are paid.

## **WHT declaration**

The format of the new WHT declaration is expected to be confirmed in instructions to be issued by the Ministry of Finance and Economy and to require the following information:

- Identification data of the WHT agent;
- Identification data of the taxpayer for whom the tax is being withheld;
- Tax residency where the tax is being withheld for a nonresident taxpayer;
- Type of income or payment;
- The amount of WHT; and
- The date on which the income arose or payment was made.

These requirements are more onerous than under the current law, which requires the return to include only identification data for the WHT agent and the total monthly WHT amount for each type of income paid.

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